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**Vol. I**  
**TRANSCRIPT OF RECORD**

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**Supreme Court of the United States**

OCTOBER TERM, 1940 ~~1940~~ 1941

No. ~~624~~ 19

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PHOENIX FINANCE CORPORATION, PETITIONER,

*vs.*

IOWA-WISCONSIN BRIDGE COMPANY

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ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT  
OF APPEALS FOR THE EIGHTH DISTRICT

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PETITION FOR CERTIORARI FILED DECEMBER 13, 1940.

CERTIORARI GRANTED JANUARY 20, 1941.





# United States Circuit Court of Appeals

## EIGHTH CIRCUIT.

No. 11,734

CIVIL.

PHOENIX FINANCE CORPORATION A  
CORPORATION OF THE STATE OF  
DELAWARE, APPELLANT,

vs.

IOWA-WISCONSIN BRIDGE COMPANY, A  
CORPORATION, APPELLEE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF IOWA

REFILED MAY 22, 1940.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., FEB. 25, 1941.



Pleas and proceedings in the United States Circuit Court of Appeals for the Eighth Circuit at the October Term, 1940, of said Court, before the Honorable John B. Sanborn, the Honorable Joseph W. Woodrough and the Honorable Seth Thomas, Circuit Judges.

Attest:

(Seal)

E. E. KOCH,  
Clerk of the United States Circuit Court of Appeals for the Eighth Circuit.

Be it Remembered that heretofore, to-wit: on the 22nd day of May, A. D. 1940, a transcript of record pursuant to an appeal taken from the District Court of the United States for the Northern District of Iowa, was refiled after completion by the Clerk of the District Court in the office of the Clerk of the United States Circuit Court of Appeals for the Eighth Circuit, in a certain cause wherein the Phoenix Finance Corporation, a Corporation of the State of Delaware, was Appellant and the Iowa-Wisconsin Bridge Company, a Corporation, was appellee, which said transcript as prepared and printed under the rules of the United States Circuit Court of Appeals for the Eighth Circuit, under the supervision of its Clerk, is in the words and figures following, to-wit:



[fol. 1] United States of America,  
Northern District of Iowa—ss.

Pleas before the District Court of the United States in and for the Northern District of Iowa, Eastern Division, before Hon. Geo. C. Scott, Judge of the United States District Court for the Northern District of Iowa:

First Trust and Savings Bank (formerly Bechtel Trust Company), and A. H. Schubert, as Trustees; and Phoenix Finance Corporation, Inc., Complainants,  
No. 220. vs. Equity.

Iowa-Wisconsin Bridge Company, a corporation, Defendant,

Fayette D. Kendrick, Warren G. Hayes, Anna W. Shuster, T. H. Bakewell, and Ernest W. Haverland, Interveners.

Be It Remembered, that heretofore, to-wit: on the 18th day of September, 1939, there was filed in the office of the Clerk of the United States District Court, in and for the Northern District of Iowa, for Eastern Division, at Dubuque, Iowa, Motion of Iowa-Wisconsin Bridge Company to file supplemental and ancillary bill of complaint, in the above-entitled cause, which is in words and figures as follows, to-wit:

(Motion of Iowa-Wisconsin Bridge Company for leave to file supplemental and ancillary bill of complaint.)

[fol. 2] Comes now Iowa-Wisconsin Bridge Company, the defendant in the above-entitled action, and moves this court for leave to file a Supplemental and Ancillary bill, in the above entitled cause and says:

(1) On the first day of December 1936 the final decree was entered in the above entitled action, a copy of which

is attached to the proposed Supplemental and Ancillary Bill.

(2) Since the entry of said decree, which was affirmed by the Circuit Court of Appeals of the United States for the eighth circuit, the complainant, Phoenix Finance Corporation, for the purpose of attempting to invalidate and nullify said decree has commenced and threatens to commence various suits in the courts of the state of Delaware and has done and is doing other acts, all as is more particularly and fully set out in said proposed Supplemental and Ancillary Bill.

(3) Said motion will be made on the verified proposed Supplemental and Ancillary Bill, copy of which is hereto attached, and upon all the records and files in the above entitled action.

F. A. ONTJES,  
W. C. GREEN,

Attorneys for Defendant Iowa-  
Wis. Bridge Co.

Filed in the District Court September 18, 1939.

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[fol. 3] (Order Granting Leave to File Supplemental and Ancillary Bill.)

This cause came on for hearing on motion of the defendant, Iowa-Wisconsin Bridge Company for leave to file Supplemental and Ancillary Bill, and it appearing that notice of such motion, with copy of said Supplemental and Ancillary petition thereto attached, having been served on the Phoenix Finance Corporation, Complainant, by service on Caspar Schenk, as resident agent of said corporation and as attorney of record for said Phoenix Finance Corporation, and the Court being fully advised in the premises, it is hereby

Ordered and Adjudged that the defendant, Iowa-Wisconsin Bridge Company is hereby granted leave to file such Supplemental and Ancillary Bill.

Done and ordered this 18th day of September, 1939.

GEO. C. SCOTT,  
Judge U. S. District Court.

Filed in the District Court September 18, 1939.

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[fol. 4] (Supplemental and Ancillary Bill.)

In the District Court of the United States for the Northern District of Iowa, Eastern Division.

First Trust & Savings Bank (formerly Bechtel Trust Company) and A. H. Schubert, as Trustees, and Phoenix Finance Corporation, Complainants,

#220. vs. In Equity.

Iowa-Wisconsin Bridge Company, a corporation,  
Defendant,

Fayette D. Kendrick, Warren G. Hayes, Anna W. Schuster,  
T. H. Bakewell and Ernest W. Haverland, Interveners.

Comes now the defendant Iowa-Wisconsin Bridge Company and with leave of court brings this its Supplemental and Ancillary Bill of complaint against complainant, the Phoenix Finance Corporation, and states:

(1) That the above entitled cause was commenced by the Bechtel Trust Company (now First Trust & Savings Bank) and A. H. Schubert as Trustees on an alleged deed of trust and bonds at the request and instigation of the complainant Phoenix Finance Corporation against the Iowa-Wisconsin Bridge Company and that a receiver was appointed of all the property of the bridge company and that thereafter petitions of intervention were filed by the above named interveners with leave and by order of court to defend said action; and the Phoenix Finance Corporation made a party complainant by order of court; and that said cause was heard and decree rendered as hereinafter set forth.

(2) That on the 1st day of December 1936 the court filed its opinion and findings of fact and final decree, which [fol. 5] was entered of record, copies of which are hereto attached, marked Exhibits "A", and "B" and "C" respectively, and are made a part of this Supplemental and Ancillary Bill. That by said final decree all matters and differences between the complainant Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc. on the one hand and the defendant Iowa-Wisconsin Bridge Company on the other, were fully settled, adjudicated and determined, and that since the entry of said de-

cree there have been no business transactions whatsoever between said defendant Iowa-Wisconsin Bridge Company and said complainant Phoenix Finance Corporation or its predecessor.

(3) That following the entry of the decree aforesaid the complainant Phoenix Finance Corporation filed a petition for rehearing and prayed in the alternative that the decree be modified so as to withhold from adjudication the question of the validity of the \$50,000 mortgage dated March 10, 1931, by permitting Phoenix Finance Corporation to institute an action at law against the bridge company if it so desired, for money had and received and be reinvested in said Phoenix Finance Corporation 517 shares of "A" stock surrendered in exchange for bonds. That the petition for rehearing and petition for modification of the decree were denied and that a copy of the order of the court overruling the petition for rehearing and motion for modification of the original decree is attached hereto, marked Exhibit "D" and made a part of this Supplemental and Ancillary Bill.

(4) That appeal from the said decree, orders, rulings and adjudication of this court was taken to the Circuit [fol. 6] Court of Appeals of the Eighth Circuit by the above named complainants, where the same was affirmed, a copy of said opinion of said court is hereto attached, marked Exhibit "E" and made a part hereof. That petition for Writ of Certiorari to the Supreme Court of the United States was denied and the mandate of the Circuit Court of Appeals was issued on the third day of April 1939 and on the 6th day of April 1939 was filed and entered in the office of the Clerk of this Court.

(5) That the above entitled action was commenced about the 28th day of August 1933. That a large number of depositions were taken which involved a great deal of time, very voluminous transcripts, hundreds of exhibits; the trial of this cause before the Master involved a number of weeks and the said trial a large amount of additional oral testimony was taken; that the hearing before this court on exceptions involved months of work and that the hearing before this court to settle the record and of this cause before the Circuit Court of Appeals involved many weeks of additional work; that this cause was defended



against the unjust claims of the Phoenix Finance Corporation at great expense to the bridge company and in said action the various claims of the Phoenix Finance Corporation were fully heard and adjudicated; that to relitigate the matters determined, piecemeal or otherwise would subject the bridge company to great expense and impair its credit and business to its irreparable injury.

(6) That notwithstanding the final adjudication and order of the District Court of the United States for the Northern District of Iowa, the complainant, Phoenix Finance Corporation is disregarding said adjudication and order, and for the purpose of attempting to invalidate and nullify the lawful decree and order of said court and for the [fol. 7] purpose of depriving this defendant of the fruits of said adjudication and for the purpose of harassing, vexing and annoying and destroying the business of this defendant, has commenced and is prosecuting and is about to prosecute in the State of Delaware numerous and divers suits and actions involving the same matters fully and finally determined by said United States District Court for the Northern District of Iowa and has further and in contempt of said court filed for record and recorded the \$50,000 mortgage hereinbefore and hereinafter referred to held by said court to be fraudulent and invalid.

(7) That in particular said Phoenix Finance Corporation has commenced and is prosecuting the following suits against this defendant:

(a) Said Phoenix Finance Corporation filed an action entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware in the Superior Court of the State of Delaware in and for New Castle County, the summons of said action being dated September 29, 1938 and the alleged cause of action being based on two certain alleged promissory notes, one of \$2000 dated December 15, 1932 and one of \$3125 dated January 20, 1933, which were involved in the above entitled cause and the adjudication thereof; that in this cause it was claimed that said notes and the alleged consideration thereof formed part of the consideration for

the issuance of \$20,100 of the bonds involved in this action. That this court found that the said bonds were fraudulently issued and wholly without consideration and were more than offset by indebtedness of Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc. to this [fol. 8] defendant, Iowa-Wisconsin Bridge Company. That in said cause in Delaware the defendant, Iowa-Wisconsin Bridge Company interposed the defense of res judicata and other defenses, such as want of consideration. That said cause was tried on the issue raised by the plea of res judicata, but has not yet been determined by the Delaware court.

(b) That on or about the 20th day of February 1939 the said Phoenix Finance Corporation commenced an action in the Court of Chancery of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation of the State of Delaware, plaintiff versus Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, defendant, and caused subpoena to be issued therein and served on this defendant and filed bill of complaint, asking to recover 517 shares of Class "A" stock of the Iowa-Wisconsin Bridge Company, which was surrendered and cancelled at the time said Phoenix Finance Corporation fraudulently procured the issuance of \$60,500 of bonds involved in and as found in this action, and which stock this court and the Circuit Court of Appeals ordered, adjudged and found the said Phoenix Finance Corporation was not entitled to have reissued to it. That this defendant answered in said cause, but that said cause has not been tried.

(c) That the said Phoenix Finance Corporation has commenced an action in the Superior Court of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company duly organized and existing under the laws of the State of Delaware and has caused summons to [fol. 9] be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware on the 18th day of September next to answer said Phoenix Finance Corporation of a plea of trespass on the case, etc.; that said

summons was caused to be issued on the 22nd day of June 1939 and served on this defendant. That a copy of said summons is hereto attached, marked Exhibit "F" and made a part hereof.

(d) That the said Phoenix Finance Corporation commenced another action in the Superior Court of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, duly organized and existing under the laws of the State of Delaware, and caused summons to be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware on the 18th day of September next to answer said Phoenix Finance Corporation of a plea "that it hold and keep with it the covenant between them made according to the force and effect of said articles of agreement between them, etc." That the said Phoenix Finance Corporation caused said summons to be issued on the 22nd day of June, 1939, and caused the same to be served on this defendant. That a copy of said summons is attached, marked Exhibit "G" and made a part hereof.

(e) That the said Phoenix Finance Corporation commenced another action in the Superior Court of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, and [fol. 10] caused summons to be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware on the 18th day of September next to answer said Phoenix Finance Corporation of a plea of trespass on the case, etc. That said Phoenix Finance Corporation caused said summons to be issued on the 11th day of July, 1939, and served on this defendant. That a copy of said summons is hereto attached, marked Exhibit "H" and made a part hereof.

(f) That the said Phoenix Finance Corporation commenced another action in the Superior Court of the State of Delaware in and for New Castle County entitled Phoenix

Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, and caused summons thereof to be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware on the 18th day of September next to answer said Phoenix Finance Corporation of plea of trespass on the case, etc. That said Phoenix Finance Corporation caused said summons to be issued on the 17th day of August, 1939, and served on this defendant. That a copy of said summons is attached hereto, marked Exhibit "I" and made a part hereof.

(8) That no pleadings have been filed in the last four actions referred to and this defendant on account thereof is not able to more specifically state with respect thereto than as indicated in the summons in said causes, but this defendant alleges that [is] has had no business with the said Phoenix Finance Corporation since the commencement [fol. 11] of this action and alleges on information and belief that the said actions are a mere attempt on the part of the Phoenix Finance Corporation to re-litigate the matters [involved] in this cause and decided by this court.

(9) That John A. Thompson who was found by this court in this cause as controlling the Phoenix Finance Corporation while dominating and controlling the bridge company in a fraudulent scheme, plan and conspiracy to cheat and defraud the bridge company and its stockholders, as president of the Phoenix Finance Corporation asserted about December 6th, 1938, since the rendition of this court's decisions and the decision by the Circuit Court of Appeals and the United States Supreme Court in this cause, that the litigation [involved] in this action was not ended and would not be ended for a good many years. That on the 8th day of July, 1939, as president of the Phoenix Finance Corporation, said Thompson further asserted that one case had been tried in the courts of Delaware in June, 1939; that the thing, referring to the matters involved in this case, was not over, and that there were six cases in the State of Delaware [what] would be carried on in the course of the next few months.

(10) That the said John A. Thompson on the 23rd day of November, 1938, wrote the stockholders of the Iowa-Wisconsin Bridge Company: "I am not asking you or any other man to help me or to help Phoenix; Phoenix does not need any help in its fight to maintain its creditor position. In the end the facts will all be proved in competent courts, I am not a bit disturbed about the final outcome," etc.

[fol. 12] That on the 12th day of June, 1939, the said John A. Thompson, president of the Phoenix Finance Corporation wrote to a stockholder and director of the Iowa-Wisconsin Bridge Company:

"Now Phoenix claimed outright ownership of \$97,000 and \$60,500 or a total of \$157,000 of the Bridge bonds. The \$60,500 were bonds received in connection with the retirement of 517 shares of preferred stock which was unquestionably owned and paid for by Phoenix, so if the bonds were no good, certainly the Bridge Company must return the 517 shares of preferred stock to Phoenix. A suit is now pending in Delaware to enforce the Bridge Company to do that which it should in fairness and honesty do without a law suit, and there is not the slightest doubt that the Delaware courts will make the Bridge Company make good on the \$60,500 of bonds or return the 517 shares of preferred stock. So while this law suit may have resulted in the elimination of the \$60,500 of bonds as a bonded debt, that was not a gain of \$60,500 to the Bridge Company by any means.

"As to the \$97,000 worth of bonds, even if the mortgage deed of trust has been adjudicated and eliminated, and it is still shown that the Bridge Company owes the \$97,000 for legitimate borrowings, it makes little difference whether the Bridge Company pays the debt by reason of a mortgage foreclosure or by way of a judgment and execution against the Bridge.

"We have to this point accounted for \$22,400 of bonds in the hands of third parties, eliminated by legitimate retirement of the full amount owing thereon, and \$157,500 worth [fol. 13] of bonds, the collection of which has been temporarily stayed, making a total of \$179,000 and leaving \$20,000 yet to be accounted for.

"These \$20,100 of bonds were pledged as collateral against Bridge Company notes for borrowed money, total-



ing \$17,735.19. Suits are now pending on these notes in the Delaware courts, and there is not the slightest chance that they will not be collected, because here Phoenix will have opportunity to present its evidence, which was never done in any of the proceedings in Federal Court, and could not properly be done because Phoenix and the Bridge Company, both being Delaware corporations, could not carry on as proper parties with adverse interests in a Federal Court proceeding, as you well know."

That all of said matters were involved in this cause and determined by this court's decisions.

(11) That on June 2, 1939, the said John A. Thompson and Phoenix Finance Corporation caused to be recorded in the office of the County Recorder in Book L pages 625-626 of Allamakee County, Iowa, an alleged mortgage of the Iowa-Wisconsin Bridge Company to the Phoenix Finance System, Inc., in the sum of \$50,000 dated March 10, 1931, which this court in this cause found to be without consideration, fraudulent and void, issued as a part of a scheme, plan and conspiracy to cheat and defraud the bridge company and its stockholders. That by the recording of said alleged mortgage said Phoenix Finance Corporation has wrongfully cast a cloud upon the title of this defendant to its property and has attempted to render null and [fol. 14] void that portion of the decree and order of this court finally determining the invalidity of said mortgage.

(12) That the complainant Phoenix Finance Corporation as hereinbefore set forth is threatening to and unless restrained by this court will proceed to institute and prosecute actions as aforesaid and will permit to remain on record the invalid \$50,000 mortgage aforesaid; that unless said complainant Phoenix Finance Corporation is restrained by this court as herein prayed this defendant will be deprived of the fruits and advantages of the judgment, decree and orders of this court in this cause and said complainant will continue with vexatious suits in utter disregard thereof; that the acts of said Phoenix Finance Corporation will cast a cloud over defendant's franchises because of a multiplicity of vexatious suits brought and to be brought against defendant and it will be damaged in a way that cannot be repaired or estimated at common law, and

from these threatened wrongs this defendant has no remedy at common law but the only remedy is [is] equity.

Wherefore this defendant prays that the complainant Phoenix Finance Corporation and its officers, agents, servants and employees and attorneys and all those acting by or through or for it or them and its successors and assignees be perpetually and forever, jointly and severally, enjoined and restrained from in any wise further proceeding, conducting or carrying forward, in any manner whatsoever, and from causing, procuring or suffering to be conducted or carried forward, in any manner whatsoever, any and all steps, motions and proceedings in the actions or [fol. 15] suits heretofore brought, instituted and commenced by said Phoenix Finance Corporation, complainant herein, against the above named Iowa-Wisconsin Bridge Company, defendant herein, in the courts of the State of Delaware, to which reference has been made in paragraph seven of this Supplemental and Ancillary Bill and from instituting, commencing, bringing or continuing or causing, procuring or suffering to be instituted, brought, commenced or continued any and all further actions or suits founded and based upon claims of said Phoenix Finance Corporation against this defendant, concerning which findings were made by this court in this action or which were determined by this court in its order denying the petition for rehearing and motion for modification of decree by said Phoenix Finance Corporation, or which were determined by the Circuit Court of Appeals of the United States for the Eighth Circuit upon the appeal of said Phoenix Finance Corporation, and that said Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys be commanded and ordered forthwith to dismiss upon the merits all those actions and suits heretofore commenced by them against this defendant in the State of Delaware and particularly those mentioned and referred to in paragraph seven of this Supplemental and Ancillary Bill. Further, that said Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys be commanded and ordered forthwith to satisfy and remove from the records of the County Recorder of Allamakee County, Iowa, a certain mortgage executed by Iowa-Wisconsin Bridge Company to Phoenix Finance System, Inc., dated

March 19, 1931, recorded in the office of said County Re-  
[fol. 16] corder of said Allamakee County, Iowa, on the  
2nd day of June, 1939, in Book L at pages 625-626, covering  
property and assets of said Iowa-Wisconsin Bridge Com-  
pany, and that said Phoenix Finance Corporation sur-  
render the original of said mortgage and any purported  
notes secured thereby to this court for cancellation. This  
defendant further prays that in the meanwhile a prelim-  
inary injunction be granted by and issued out of this court,  
enjoining, restraining and commanding the said acts and  
proceedings during the pendency of this action, and for such  
other and further relief as to the court may seem just and  
equitable.

Dated this 8th day of September, A. D. 1939.

F. A. ONTJES,

W. C. GREEN,

Attorneys for Defendant,

Iowa-Wisconsin Bridge Company.

[fol. 17] State of Iowa,

Cerro Gordo County.—ss.:

F. A. Ontjes and W. C. Green, being each duly sworn  
for himself deposes and says that he is one of the attorneys  
for the defendant in the above entitled action; that he has  
read the above and foregoing Supplemental and Ancillary  
Bill and knows the contents thereof and that the same is  
true, except as to the matters therein set forth on informa-  
tion and belief, and as to those he believes them to be true.

F. A. ONTJES,

W. C. GREEN.

Subscribed and sworn to before me by the said F. A. Ontjes  
and W. C. Green this 9th day of September, A. D.,  
1939.

(Seal)

F. T. BARRETT,

Notary Public in and for  
Cerro Gordo County, Iowa.

Filed in the District Court, September 18, 1939.

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[fol. 18]

## Exhibit "A"

## Opinion of District Court

United States District Court, Northern District of Iowa,  
Eastern DivisionBechtel Trust Company, and A. H. Schubert, Trustees,  
Plaintiffs,

No. 220 vs. In Equity

Iowa-Wisconsin Bridge Company, Defendant,

Fayette D. Kendrick, et al., Interveners.

"This is a suit in equity by trustees under a trust deed, purporting to secure a \$200,000 issue of bonds, and that purports to convey to the trustees an interstate bridge across the Mississippi River from the town of Lansing in Allamakee County, Iowa, to a point on the opposite Wisconsin shore. Plaintiffs' bill alleges default and a breach of condition in failure to pay the principal of two bonds of \$5,000. each, the interest upon the entire issue, and the taxes on the bridge. The defendant, Iowa-Wisconsin Bridge Company, hereinafter referred to as the Bridge Company, appeared timely and answered the bill, alleging in substance that a majority of the stock of the Bridge Company was owned by directors and stockholders of the Phoenix Finance System, Inc., who were also officers and directors of the Bridge Company, and that the bonds were issued to the Phoenix Finance System, Inc., in exchange for stock in the Bridge Company unlawfully surrendered and returned to the Bridge Company. Not much progress was made under this answer and later Fayette D. Kendrick, a stockholder in the Bridge Company and certain other stockholders, were permitted to intervene and join as defendants, and the petition of intervention of such stockholders by Order was permitted to stand as an answer in behalf of the Bridge Company. After process of amendment this pleading after alleging the necessary jurisdictional facts, as a defense alleges in substance that at the time of the execution of the trust deed and the issuance of the bonds the Bridge Company was in complete control of one John A. Thompson who controlled a majority of its voting stock and who controlled its officers and board of directors, and who was also the president and

owner of a controlling interest in the Phoenix Finance System, Inc., and controlled its officers and board of directors, and other subsidiary companies; and that the said Thompson in fraudulent conspiracy with others who were officers and directors of the Bridge Company, and also officers and directors of Phoenix Finance System, Inc., planned and schemed to acquire the ownership of said bridge to the exclusion of the Bridge Company and its other stockholders, and as a part of such fraudulent scheme and plan caused the bonds in question to be issued and the trust deed purporting to secure the same to be executed without lawful consideration to the Bridge Company, and particularly that the said John A. Thompson caused approximately \$60,500 in bonds to be issued in exchange for stock in the Bridge Company unlawfully surrendered by him or his controlled company, Phoenix Finance System, Inc.; and caused to be built up on the books of the Bridge Company a false and fictitious account in the sum of approximately \$97,000., indicating and declaring in substance that the Bridge Company owed Phoenix Finance System, Inc., such sum, and caused bonds in that aggregate amount to be issued without consideration to the Bridge Company; and other things done and accomplished by said John A. Thompson in pursuance of said fraudulent conspiracy to the end that said trust deed and all of said bonds so issued are fraudulent and void.

After issue joined, by Order of the Court in pursuance of agreement of parties, the cause was referred to Hon. James W. Kindig, as Special Master in Chancery to hear and report the evidence with findings of fact and conclusions of law in pursuance of the existing Equity Rules. The Master qualified and proceeded with his long and [fol. 20] arduous task and after fifty-five days devoted to the taking of testimony, filed his report which with the exception of a number of comparatively minor items aggregating in all approximately \$27,000., found the issues for the defendants and interveners.

In due time the Trustees, plaintiffs, and Phoenix Finance Corporation, successor to Phoenix Finance System, Inc., which in the meantime had become a party plaintiff to the suit, filed exceptions to the Report of the Master. The

defendants also filed certain exceptions to the findings of the Master unfavorable to them. The cause then came before the Court upon the various exceptions to the Master's Report, which were submitted after oral arguments and very voluminous and complete briefs by all parties.

The Master in his Report, after reciting briefly the historical features of the case and the issues as defined by the pleadings, makes fourteen specifically numbered findings of fact. I shall here refer to them in their numerical order.

Finding 1. That on February 20, 1932, the Bridge Company executed the trust deed as of date, however, January 1, 1932, to secure a bond issue of \$200,000 and complainants were named as trustees.

Finding 2. That the Bridge Company as of January 1, 1932, purported to authorize the issuance of \$200,000 of bonds.

Finding 3. That the principal on the bonds, together with interest and taxes, as alleged in the complaint, are in default.

Finding 4. (a) That John A. Thompson before the issuance of the bonds or authorization of the trust deed, came into control and management of the Bridge Company.

(b) That during all of that time and thereafter, said Thompson also controlled the Phoenix Finance System, Inc., and affiliated companies.

Finding 5. That notwithstanding certain inhibitory provisions in its charter, the Bridge Company through the influence of Thompson and his associates, caused \$60,500 of bonds to issue to Thompson or Phoenix Finance System, Inc., in exchange for Class A stock held by him, without giving like opportunity to other stockholders.

Finding 6. That the issuance of said bonds in consideration of the surrender of the said shares impaired the capital of the Bridge Company, and was in violation of a statute of Delaware under which the Bridge Company was incorporated.

Finding 7. That the action of Thompson in promoting such exchange of shares for bonds, was fraudulent and for

the purpose of conferring upon himself a preference over other holders of Class A stock.

Finding 8. That \$97,000 of the bonds were transferred by the Bridge Company to Thompson or his controlled companies on a pretended book account originating out of a pretended mortgage for \$50,000. covering an obligation which J. W. Shaffer & Company was in duty-bound to perform under its construction contract, and which contract provided for a surety company performance bond, which Thompson permitted Shaffer & Company to omit to furnish. That Thompson and his companies did not, in fact, perform the obligation on behalf of Shaffer & Company, but built up a pretended account to make it falsely appear that Shaffer & Company failed in its duty, and that Thompson and his controlled companies expended \$97,000. in such performance. But as a matter of fact, Thompson and his controlled companies only expended \$9,000. in payment to a sub-contractor in settlement of a mechanic's lien, and that \$88,000 of said \$97,000 of bonds was without consideration.

Finding 9. That resolutions pretended to have been passed by the Bridge Company authorizing said \$97,000 issue of bonds were not genuine and legal resolutions so far as they related to \$88,000 of the \$97,000 issue, but were [fol. 22] procured through the influence and connivance of Thompson and his associates, and that independent directors and stockholders voting in support of such resolutions, were deceived and misled by misrepresentations of Thompson.

Finding 10. (a) That of said bonds the Bridge Company received full consideration for the said \$9,000 thereof paid in settlement of the mechanic's lien.

(b) That of \$7,400. of bonds issued to Helmer N. Anderson, the Bridge Company received consideration only of \$6000.

(c), (d), (e), (f) and (g) were five \$1,000 bonds issued in settlement and compromise of five disputed claims, and the Bridge Company received full consideration.

(h) Respecting \$10,000 of bonds issued to Bradshaw, Schenk & Fowler, attorneys, to secure two notes aggregat-

ing \$4,000 the Bridge Company received consideration to the extent of \$4,000.

(i) That the remaining bonds, approximating \$19,000 or \$20,000., were issued to the Phoenix Finance Corporation as security for a note of \$3,125. given in part to secure an advance for the payment of taxes of the Bridge Company, and that said bonds were valid only to the extent of said note.

(j) That of the bonds held by Bradshaw, Schenk & Fowler in the amount of approximately \$6,000., are without consideration and invalid.

(k) That of the bonds above issued to Phoenix Finance Corporation to secure the note of \$3,125., approximately the sum of \$16,975. are without consideration and obtained by fraud and invalid.

Finding 11. That Thompson, speaking for himself and the Phoenix Finance System, Inc., and his other affiliated institutions, admitted that he and his institutions owned at least ninety per cent of the total \$200,000. bond issue, and now hold the same.

Finding 12. That as alleged in paragraph 18 of the petition of intervention, any demand before the commencement of this suit that might have been made by the inter-[fol. 23] veners to obtain relief from the issuance of said bonds from and through the defendant corporation, would have been unavailing.

Finding 13. That the Bridge Company was not making, and would not have made, a good faith defense to the complainants' action had not the interveners intervened.

Finding 14. That the interveners and defendant are not estopped to make their defense. That the purported ratification and estoppel claimed by complainants was brought about through connivance and control by said Thompson, as was the original conspiracy and fraud, and that so far as independent stockholders and directors are concerned, they did not know of the fraud and conspiracy when taking action.



I have not undertaken to quote the Master's language, but have given the substance of each finding somewhat condensed.

The Master in his Report returned twelve numbered conclusions of law. I shall now quote these in their entirety with the Master's citation of authority:

'1. That by the introduction into the record of the deed of trust and evidence of the issuance of the bonds thereunder, the complainants have made out a prima facie case.

2. When a suit, as in the case at bar, is brought in the interests of one (Thompson) who holds or controls the majority of the stock in the defendant corporation, and his interests in the suit is against the interest of the corporation, and the directors (except director Haehlen) of the corporation failed, as in this case, to defend in good faith, the interveners in the case at bar, as stockholders, may intervene and defend in behalf of the corporation. Fletcher, on Corporation, Vol. 13, sec. 5853; Whittacker vs. Brietson Mfg. Co. (8 C. C. A.) 43 Fed. (2d) 485, at 489; Palmer vs. Bankers Trust Co., et al., 12 Fed. (2d) 747; Mecartney vs. Guardian Trust Company (8 C. C. A.) 230 Fed. p. 64; Delaware & Hudson Co. vs. Albany & Susquehanna Railroad Company, 213 U. S. 435 (53 L. ed. 862); Federal Equity Rule 27.

[fol. 24] 3. Although in the case at bar the mortgage on the property of the defendant, Bridge Company, is in the nature of a deed of trust to secure bonds, yet so far as the defense here involved is concerned the position of the complainants is analogous to an attempt on the part of the plaintiff to foreclose an ordinary mortgage securing a note, and fraud and want of consideration are available to the defendant and interveners against the complainants and alleged bondholders. 41 Corpus Juris, 283, sec. 8; Shillaber vs. Robinson, 97 U. S. 68, 24 L. Ed. 967; Fletcher, on Corporations, Vol. 7, p. 341, sec. 3179; Fletcher, on Corporations, Vol. 7, p. 428, sec. 3262, also sec. 3278; 8 Corpus Juris p. 984, sec. 1292; Lytle vs. Town of Lansing, 147 U. S. 59.

4. Where, as in the case at bar, Thompson, a stockholder and director in the Bridge Company, and also a stockholder and director of the Phoenix Finance System, Inc., and

affiliated companies, gained a personal advantage as he did in the bond issue while he as such stockholder and director controlled both the Bridge Company and the Phoenix Finance System, Inc., and affiliated companies, the burden was upon him to show that the transactions between the Bridge Company and the Phoenix Finance System, Inc., and affiliated companies were entirely fair, free from fraud and overreaching. Fletcher, on Corporation, Vol. 3, p. 307, sec. 944; Tower-Hill-Connellsville Coke Co. vs. Piedmont Coal Co., 62 Fed. (2d) 817; Corsicana National Bank vs. Johnson, 251 U. S. 68; Geddes vs. Anaconda Copper Mining Co., 254 U. S. 590; Washburn, et al. vs. Green, et al., 133 U. S. 30; Globe Woolen Co. vs. Utica Gas & Electric Company, 121 N. E. 378; Fletcher, on Corporations, Vol. 3, pp. 355, 356, Sec. 973; Backus vs. Finkelstein, 23 Fed. (2d) 257; Thomas & Bronville Ft. K. & P. Ry. Co., 109 U. S. 522, 27 L. ed. 1018; Jones vs. Missouri-Edison Electric Co., 144 F. 765; Heim vs. Jobes, 14 F. (2) 29; Twin Lick Oil Co. vs. Marbury, 91 U. S. 587, 23 L. ed. 328; Fletcher, on Corporations, Vol. 3, p. 298, sec. 937.

[fol. 25] 5. That under the facts above found, it is apparent as a matter of law that the complainants did not furnish the necessary proof to sustain the validity of the bonds, except the bonds specifically named in paragraph ten of the findings of fact, and the prima facie showing made in the first instance by the complainants has been overcome by evidence of the defendant and interveners except as to those bonds especially named as having consideration in paragraph ten of the findings of fact, and all the said bonds not named in said paragraph ten of the findings of fact as having consideration, are illegal and void because they were issued fraudulently.

6. That excluding the said bonds specifically mentioned in paragraph ten of the findings of fact as having consideration, approximately \$112,375.00 of the balance of the said bonds issued to the said Thompson and his companies, not in exchange for stock but on a fraudulently alleged consideration purporting to appear upon the books of the Iowa-Wisconsin Bridge Company, were issued without legal consideration and are therefore void. (See cases above cited).

7. That the issuance of the said bonds, amounting to approximately \$112,375.00, last named, to the said Thompson or the Phoenix Finance System, Inc., or other affiliated companies and others, was void regardless of the said lack of legal consideration because such bonds under the circumstances were, under the findings of fact above named, fraudulently obtained, except that the said bonds held as excessive security by the said Bradshaw, Schenk & Fowler, named in paragraph ten of the findings of fact, were not fraudulently obtained but are being held without consideration except insofar as the same are held as security for the two notes named in said paragraph ten of the findings of fact.

8. That at the time of the bond issue in question and at the time Thompson, for himself or his controlled companies, [fol. 26] caused the Bridge Company to transfer to himself or to his controlled companies approximately \$60,500.00 of Class A preferred stock of the Bridge Company for that amount of the bonds of the Bridge Company, it was the law of Delaware that a corporation, as the Bridge Company in the case at bar, could not purchase its own stock, when, as was the case here, the use of its funds so to do caused an impairment of the capital of the corporation. (See Sec. 191, General Corporation Laws of Delaware).

9. That under the Articles of Incorporation of the Bridge Company at the time the Class A stock belonging to Thompson or to his companies was exchanged for the bonds of the Bridge Company, there was in existence a provision in the Articles of Incorporation of the Bridge Company making the transaction illegal and void because neither all the stock of like kind was redeemed at said time, nor was the portion thus redeemed duly called by lot after due notice, so as to provide fairness and equality between like stockholders.

10. That because such exchange of stock for bonds was done for the sole advantage of the said Thompson and his companies and to the disadvantage of the other like stockholders, the transaction was fraudulent and voidable. (See cases above cited).



11. That in view of the fact that the said Thompson and his companies were not (except as hereinafter stated) good faith purchasers of any of the said bonds for a valuable consideration, and in view of the fact that the said Thompson and the said companies now own at least ninety percent of the said \$200,000.00 bond issue, such portion of the said bonds cannot be enforced in this foreclosure proceeding by the complainant, except that the bonds named in paragraph ten in the findings of fact as having been issued in good faith and for a consideration are valid and may be enforced accordingly.

[fol. 27] 12. That the defendant and interveners are not estopped from making the defenses set forth in the answer and cross-petition because, so far as Thompson and the stockholders and directors under his control are concerned, the same fraudulent influence vitiated the alleged ratification that vitiated the original transaction, and, so far as the independent stockholders and directors are concerned, they did not know of the fraud of Thompson at the time they are alleged to have voted for the purported ratification.

As I have stated, the plaintiff trustees and their co-plaintiff, Phoenix Finance Corporation, filed exceptions to the Master's Report separately, but inasmuch as the plaintiff trustees as their second exception adopted all of the exceptions of Phoenix Finance Corporation, I shall first enumerate the exceptions interposed by Phoenix Finance Corporation. I shall not attempt to quote the exceptions at large as they are prolix and argumentative:

Phoenix Corp.'s Exception No. 1: Challenges the Master's finding of fact No. 4 (a), which is to the effect that John A. Thompson before the issuance of the bonds or the authorization of the trust deed, came into control and management of the Bridge Company.

Phoenix Corp.'s Exception No. 2: Challenges the Master's finding of fact No. 4 (b), that during all of that time and thereafter John A. Thompson controlled the Phoenix Finance System, Inc., and affiliated companies.

Phoenix Corp.'s Exception No. 3: Challenges generally the Master's findings of fact numbered 5, 6, 7, 8, 9 and 10,

which findings are in effect findings of fraud on the part of Thompson and his controlled officers and directors in bringing about the issuance of the bonds and the execution of the trust deed in question.

[fol. 28] Phoenix Corp.'s Exception No. 4: Challenges the Master's findings of fact numbered 5, 6 and 7, in disallowing and holding void \$60,500. of bonds transferred to Phoenix Finance System, Inc.

Phoenix Corp.'s Exception No. 5: Challenges the Master's findings of fact numbered 8 and 9, in which the Master found only \$9,000 of the \$97,000. issue of bonds to have been issued for a consideration; and that the resolutions relating thereto were the result of influence and connivance on the part of Thompson and his associates.

Phoenix Corp.'s Exception No. 6: Challenges the Master's findings of fact Nos. 10(i) and (K), in finding "\$19,000 to \$20,000" pledged to Phoenix Finance Corporation to secure a note of \$3,125., invalid and without consideration except to the extent of \$3,125.

Plaintiffs then except separately to each of the Master's conclusions of law and to each of the Master's recommendations.

Plaintiff trustees in addition to the adoption of all exceptions of the Phoenix Finance Corporation, interpose particular exceptions as follows:

Trustees' Exception No. 1: Challenges generally the Report of the Master for assuming to consider and pass upon the validity of any of the bonds; it being the plaintiff's contention that the Master should have considered the validity of the trust deed and whether the plaintiffs were entitled to foreclosure the same for any amount, and then thereafter to give each and all of the bondholders separate hearings upon the validity of the bonds held by them.

Numerous other exceptions were interposed by the plaintiff trustee which I think need no separate consideration in this opinion, inasmuch as the questions presented are all involved in the exceptions of the Phoenix Finance Corp. [fol. 29] ration adopted by the plaintiff trustees.

The defendant and interveners filed eleven exceptions to the report of the Master, but later withdrew exceptions One, Two, Five and Ten. The exceptions not withdrawn are:

Deft. and interveners' Exception Three: This exception challenges the Master's finding of fact No. 10 (d) that the \$1,000 bond issued to J. W. Dempsey was based upon a consideration and valid.

Deft. and interveners' Exception Four: This exception challenges the Master's Finding of fact No. 10 (e), that the \$1,000. bond issued to the Lyle Sign Company was based upon a consideration and valid.

Deft. and interveners' Exception Six: This exception challenges the Master's finding of fact No. 10 (g), that the \$1,000. bond issued to Cobb, Hoke, Benson and Faegre, attorneys, was based upon a consideration and valid.

Deft. and Interveners' Exception Seven: This exception challenges the Master's finding of fact No. 10 (h), that the \$10,000. of bonds issued to Bradshaw, Schenk & Fowler, attorneys, as security for two notes aggregating \$4,000. were received for a consideration and valid.

Deft. and interveners' Exception Eight: This exception challenges so much of the Master's fifth conclusion of law as makes the following exception to such conclusion: "except the bonds specifically named in paragraph 10 of the findings of fact;" and to so much of the Master's seventh conclusion of law as makes exception to such conclusion; and to so much of the Master's eleventh conclusion of law as makes exception to such conclusion, because the record does not warrant the exceptions.

Deft. and interveners' Exception Nine: This exception challenges paragraph two of the Master's recommendations containing the following, to-wit:

[fol. 30] "That the said Bill of Foreclosure of the said complainants, so far as it relates to the said bonds named in paragraph ten of the findings of fact as being based upon a consideration, should not be dismissed, but the prayer of foreclosure therein made should not be granted; that is to say, the deed of trust mentioned in the Bill of

foreclosure so far as it relates to the bonds named in this recommendation, amounting to \$27,125.00, should be foreclosed."

Deft. and interveners' Exception Eleven: This exception challenges paragraph four of the Master's recommendations relative to the proportioning of costs.

Disposition of the exceptions to the Master's report has required a careful review and consideration of the entire record. It is fitting that somewhat of the corporate history preceding the issuance of the bonds in controversy, should be here stated. Early in the year, 1928, a group of business men of the town of Lansing, Allamakee County, Iowa, hereinafter referred to as the Lansing Bridge Committee, conceived the idea of promoting the building of a toll bridge from Lansing over the Mississippi River to a point on the Wisconsin shore. To that end through their efforts on March 10, 1928, Congress passed an Act authorizing the construction of such bridge, and on March 20, 1928, the Lansing Bridge Committee effected the incorporation of the Lansing Bridge Company under the laws of Delaware. During the succeeding year the articles of incorporation were amended, changing the name to the Iowa-Wisconsin Bridge Company and altering the original plan of capitalization so that the authorized capital stood at 3750 shares of Class A stock, which was a preferred non-voting stock of a par value of \$100. per share, bearing a stipulated cumulative dividend and redeemable according to certain conditions of the articles; and also 3750 shares of common stock of no par value. Little was accomplished for a year and a half after the incorporation of the Bridge [fol. 31] Company, and during the summer of 1929 the Lansing Bridge Committee and certain directors of the Bridge Company contacted and had certain negotiations with John W. Shaffer of Minneapolis, Minnesota. Shaffer had organized a corporation under the laws of the Minnesota under the name, Standard Shares Holding Company, and he also had a partner and associate, Vernon W. O'Connor, also of Minneapolis. As a result of the negotiations with Shaffer the Company acting through members of the Lansing Bridge Committee, who designated themselves as the Lansing Bridge Company, entered into a trust

agreement with Shaffer's Standard Shares Holding Company by the terms of which—at least as construed by the parties—the Bridge Company in effect abdicated all of its functions to the Standard Shares Holding Company for the purpose of constructing the bridge, including the issuing and disposition of the shares of stock of the Bridge Company, but limiting the cost of the completion of the bridge to \$600,000. This contract was executed on October 26, 1929, and thereafter Shaffer, through his Standard Shares Holding Company, which he owned and controlled, proceeded with the promotion and construction of the bridge. The career of the project under Standard Shares Holding Company extended over approximately a year's time and was exceedingly checkered in hue. During that year the Standard Shares Holding Company, through stock of the Bridge Company issued to it, completely controlled that corporate organization. On November 9, 1929, the Bridge Company under Shaffer employed Shaffer to engineer the bridge contract for ten per cent of the total construction cost. This contract was assigned to John W. Shaffer & Company another of Shaffer's corporations. On December 7, 1929, Standard Shares Holding Company acting by Shaffer, contracted with Shaffer's partner, Vernon W. O'Connor, to do the grading for the bridge approaches at the rate of 24 cents per cubic yard. This work was immediately sub-let by O'Connor to Kram & Hogg at fifteen cents per cubic yard, and later O'Connor re-assigned the original contract to Shaffer & Company. In December, 1929, Standard Shares Holding Company for the Bridge [fol. 32] Company, still acting by Shaffer, contracted with O'Connor to build the sub-structure of the bridge for \$193,196.81, estimates to be approved and work to be accepted by Shaffer. This contract was immediately sub-let by O'Connor to Industrial Contracting Company for a maximum of \$120,748., but was actually completed for approximately \$98,000 and on April 4, 1930, this original contract was re-assigned to John W. Shaffer & Company. Under these contracts the grading and sub-structure of the bridge were practically completed during the first year. A large amount of stock in the Bridge Company was sold all at \$100. per share, common and preferred selling at the same price.



The grading and substructure of the bridge was nearing completion on October 1, 1930, and the limitation under the trust agreement for the completion of the bridge was also about to expire. Shaffer and his Standard Shares Holding Company had experienced a slowing up of the sale of shares of the Bridge Company, and began to cast about for aid, both in a financial way and in the movement of stock sales.

As has been stated, up to this time John W. Shaffer had complete control of the Bridge Company and his partner, O'Connor, at his instance, had been made president. The previous construction contracts had been held by Shaffer himself, or his solely owned John W. Shaffer & Company, and assignments had been made to V. W. O'Connor his partner, and thereafter sub-contracts had been made with the real concerns who did the grading and completed the substructure. Between the price paid the sub-contractors for actual construction and the original contract price which Shaffer caused to be agreed to be paid to himself, there was a wide difference. Interveners' claim that a pretty thorough job of looting had been done up to this point seems not to be without foundation. The point had been reached when construction of the superstructure was about to begin, contracts had been negotiated for the steel with McClintic-Marshall Company of Pittsburgh, and for [fol. 33] the putting up of the steel, that is the construction of the superstructure, contract had been negotiated with Industrial Contracting Company of Minneapolis. These companies demanded responsible assurance that payments to them would be promptly met. Shaffer through his personally owned corporation, John W. Shaffer & Company, was to have the primary contract for the construction of the superstructure, and the contracts with McClintic-Marshall Company and with Industrial Contracting Company were to be sub-contracts. In these circumstances sometime in October, 1930, John W. Shaffer contacted John A. Thompson who had an office with Shaffer and his concerns in the Phoenix Building in Minneapolis, Minnesota.

John A. Thompson, as the record indicates, was a promoter and financier. He was president, principal owner and in control of Phoenix Finance System, Inc., apparently



both an active and a holding company. Thompson had caused to be created some six or seven other Phoenix companies only one of which besides Phoenix Finance System, Inc., shows in these transactions. Thompson also was the sole owner of a corporation known as Thompson & Company, which it is claimed was a stock selling and brokerage concern. Thompson & Company shows prominently in the negotiations touching this case. The negotiations between Shaffer and Thompson resulted in an agreement that Thompson should have complete control of the Bridge Company, that Phoenix Finance System, Inc., would guarantee the sub-contractors, McClintic-Marshall Company and Industrial Contracting Company, their payments. That the principal contract for the building of the superstructure should be let to John W. Shaffer & Company. That a substantial block of stock in the bridge should go to finance Phoenix Finance System, Inc., for its services. As a result of these agreements on November 1, 1930, the board of directors of the Bridge Company was convened and the by-laws of the corporation were amended increasing the [fol. 34] number of directors, and thereupon immediately afterward J. A. Thompson, A. B. Wilder, H. T. Wagner and Edward O'Connor, were elected directors. Vernon W. O'Connor then resigned as president and J. A. Thompson was elected in his stead. Suffice to say from that time on until shortly before this suit was commenced J. A. Thompson and other officers of Phoenix Finance System, Inc., and other employees of that company controlled completely the Iowa-Wisconsin Bridge Company, notwithstanding there were more than two hundred fifty other stockholders holding from one to thirty-five shares of stock each, and all of which had paid \$100 per share for their stock, whether preferred or common.

In pursuance of the agreement between John W. Shaffer and J. A. Thompson, two important contracts were drawn up and executed. One was a contract between Iowa-Wisconsin Bridge Company and John W. Shaffer & Company for construction of the substructure of the bridge. It was executed on behalf of the Bridge Company by J. A. Thompson, president, and on behalf of the John W. Shaffer & Company by John W. Shaffer, president. It bore date November 12, 1930. The other contract, although a part of

the same agreement, bears date November 10, 1930, two days previous to the substructure contract, and was between Phoenix Finance System, Inc., first party, John W. Shaffer & Company, second party, and Iowa-Wisconsin Bridge Company, third party. Phoenix Finance System, Inc., executed by John A. Thompson, president. John W. Shaffer & Company executed by John W. Shaffer, president. Iowa-Wisconsin Bridge Company executed by E. W. O'Connor, chairman of the board. O'Connor testified that he executed on behalf of the Bridge Company because it wouldn't look well for J. A. Thompson to sign both as president of the Phoenix Finance System, Inc., and as president of the Bridge Company.

The first contract above mentioned provides in substance that the contractor was to erect the bridge in accordance with the plans and specifications, and that the owner in consideration thereof agrees to pay the contractor an amount equal to \$10,000. cash, and 3200 shares of the capital stock of the Iowa-Wisconsin Bridge Company in hand paid, receipt of which is acknowledged by the contractor. Contractor agrees to furnish a surety bond for the performance of the contract, the expense of the same to be paid by the owner.

The second contract above mentioned provides that "in consideration of one hundred forty (140) shares stock of the Iowa-Wisconsin Bridge Company in hand, paid by Third party, receipt of which is hereby acknowledged by First party and in consideration of the premises and provisions of this agreement, the First party does hereby agree to and by other endorsements does guarantee the cash payments required to be paid by the Second party to McClintic Marshall Co. of Pittsburg and Industrial Contracting Company of Minneapolis according to contracts with said companies providing for work and material to build the Black Hawk Bridge at Lansing, Iowa." It may be here stated that on numerous occasions and in numerous documents the bridge is referred to as Black Hawk Bridge, Iowa-Wisconsin Bridge, and Lansing Bridge interchangeably. The contract further provides: "In consideration of the premises and the values accruing to Second party from said guarantees by First party, the Second party hereby

agrees to meet and pay promptly when due all payments guaranteed by First party and Second party further agrees that it will pay on demand to First party any sums First party may be required to advance by reason of any of the endorsements or guarantees in connection with the building of the said Black Hawk Bridge." And the contract further provides: "In consideration of the premises and the benefits to Third party, by reason of any endorsements or guarantees of First party, the Third party hereby agrees that in event Second party fails to pay and discharge all of the payments aforesaid and/or first party is required to [fol. 36] advance any sums of money by reason of any endorsement or guarantee in connection with the financing of the said Black Hawk Bridge then and in that event the Third party agrees to pay First party on demand a sum equal to the total amount due to First party from all causes in connection with said financing of said bridge.

"It is agreed by all parties hereto that in addition to the principal sum, interest at the rate of 8% per annum will accrue and be payable upon and with all sums remaining unpaid to First party after March 1st, 1931, and that all sums advanced by First party hereunder shall become payable to First party on demand."

Said contract further provides: "Second party agrees to provide a Standard Completion Bond guaranteeing completion of the Bridge, Premium to be paid by First party."

Said contract further provides: "Third party agrees that First party may take over possession of and control of the Black Hawk Bridge and all work and management of all things in connection therewith at any time during any default of or any failure of Third party to promptly meet any payments herein required of it to be made and that First party may have and hold said Bridge and all things belonging thereto until said sums are paid in full as required hereunder."

The above contract is peculiar when it is primarily supposed to be made for the benefit of the owner and to enable the principal contractor to perform his agreement. The furnishing of a surety bond was waived and never furnished, and by the terms of this contract the owner is first made to

deliver to the guarantor 140 shares of stock at an agreed valuation of \$14,000. (the valuation is shown elsewhere in the record) as compensation to the guarantor to guarantee the contractor, and then to follow with the provision that the owner shall guarantee the guarantor.

[fol. 37] After the two foregoing contracts were concluded a third contract called a "Stated Settlement Agreement" was executed on November 26, 1930, between Standard Shares Holding Company by John W. Shaffer, and Iowa-Wisconsin Bridge Company, by J. A. Thompson. Under the provisions of this agreement it is recited that the trustee (Standard Shares Holding Company) had sold for the account of the Bridge Company, 1892½ shares Class A stock, and 1617 shares Class B stock, for the total sum of \$350,950. The trustee relinquishes all right, title and interest which it may have except 1500 shares Class B stock, and agrees that it owes the Bridge Company \$17,659.69, which was to be paid before November 25, 1930. All other assets of the Bridge Company were to be surrendered by the Standard Shares Holding Company. There was turned over assets at that time from which the Bridge Company realized in cash approximately \$80,000.

Shortly after the execution of such contract John W. Shaffer & Company sold the 3200 shares of stock which it received under the construction contract, to Thompson & Company for \$224,000 for which Thompson & Company gave its note. Under these arrangements and while the Bridge Company was under the control of J. A. Thompson and Phoenix Finance System, Inc., construction progressed under the sub-contracts. As Shaffer needed money from time to time to pay sub-contractors, Thompson & Company made payments on its note and it in the meantime was selling stock at \$100. per share. There is no claim that Thompson & Company did not eventually pay the entire face of the note. In the meantime the Bridge Company was collecting very considerable sums of money on the assets turned over by the Standard Shares Holding Company, and as stated, eventually collected about \$80,000.00.

On the 10th day of March, 1931, a meeting of the board of directors of the Bridge Company was held. Officers were

elected, Vernon W. O'Connor, Chairman of the Board, John A. Thompson, President, A. B. Wilder, Vice-President, [fol. 38] Thomas H. Bakewell, Vice-President, Oscar R. Thorson, Secretary-Treasurer. The record then recites: "The President stated that sufficient funds had not been received from the sale of stock to properly finance the completion of the Black Hawk Bridge," and the following resolution was adopted:

"Whereas, the funds received from the sales of stock of this corporation have been inadequate to properly finance the rapid completion of the Black Hawk Bridge, and

"Whereas, it is deemed by this Board expedient and advisable and to the best interests of this corporation not to delay the construction of this bridge through the shortage of finances, and

"Whereas, it is possible to borrow Fifty Thousand Dollars (\$50,000.00) for these purposes,

"Therefore, Be It Resolved, that the Vice-President, A. B. Wilder, and the Secretary, Oscar R. Thorson, be and they are hereby authorized and instructed to negotiate a loan of Fifty Thousand Dollars (\$50,000.00) from the Phoenix Finance System, Inc., payable six months from date, with interest from date at eight per-cent (8%) per annum and to execute for and on behalf of this corporation proper papers pledging all of the real and personal property of the Iowa-Wisconsin Bridge Company for the payment and satisfaction of said loan, and to sign such note, agreement or pledge, and to all things as is in their judgment necessary to accomplish this loan and to see that the loan is properly taken care of at maturity, and this Board of Directors hereby goes on record as pledging all of the assets of the Iowa-Wisconsin Bridge Company to the Phoenix Finance System, Inc., for the full and complete payment and satisfaction of all of the obligations and debts of the Iowa-Wisconsin Bridge Company to said Phoenix Finance System, Inc., as they may fall due."

[fol. 39] The Bridge Company having paid in full for the construction of the bridge, it is not shown why any insufficiency of funds concerned it. In any event, the mortgage was duly executed and delivered and entries made in the



books as though \$50,000 had been received by the Bridge Company and disbursed, but in fact no such payment had been made. In this connection certain checks were drawn, one by Phoenix Finance System, Inc., for \$35,000. payable to Iowa-Wisconsin Bridge Company, which was immediately endorsed by The Iowa-Wisconsin Bridge Company "Pay to the order of John W. Shaffer & Company." Shaffer & Company immediately endorsed the check over to Thompson & Company and Thompson & Company endorsed it back to Phoenix Finance System, Inc., the original drawer of the check. The memory of those handling this check was exceedingly dim on the taking of testimony, and it was not explained why the check was drawn or what purpose it subserved. No such sum was needed by the Bridge Company, and there is no showing that it paid any debts as such check passed through the circuit. Another check of \$15,000 was drawn by Phoenix Finance System, Inc., by J. A. Thompson, President, payable to Iowa-Wisconsin Bridge Company. It likewise made a circuit under appropriate endorsements to its original drawer, Phoenix Finance System, Inc. No obligations were paid by either of these checks, but they were supposed to have offset the \$50,000 mortgage. This mortgage was authorized March 10, 1931, and formally executed on the same day.

John A. Thompson, Phoenix Finance System, Inc., and Thompson & Company had been during the preceding winter urging the sales of stock in the Bridge Company held by Thompson & Company, and were in negotiation with Elliott-Rodgerson Company of Minneapolis, endeavoring to enlist that concern to undertake the sale of the Bridge Company's stock. On February 5, 1931, Phoenix Finance System, Inc., by J. A. Thompson, President, wrote a letter to Elliott-Rodgerson Company, Minneapolis, Minnesota, in which he very elaborately assures that concern with statements of fact and many figures, demonstrating a financial situation entirely adequate to complete the bridge. Rodgerson was a witness and testified that Thompson assured him that \$750,000 would be the entire capitalization, and that no mortgage would be placed upon the bridge. A large number of stockholders gave testimony to the effect that they bought upon the representation that the bridge would be entirely unencumbered. Elliott-Rodgerson



erson Company under Thompson's representations, sold considerable stock, all stock being sold at \$100 per share. Construction progressed and the bridge was completed and opened on June 17, 1931.

After the opening of the bridge a number of directors' meetings were held devoted to the management of the property. On October 23, 1931, a directors' meeting was held at which the purpose of the meeting was presented to the effect that there was still to be paid for the completion of the bridge, approximately \$40,000., and that the corporation was threatened with suit by certain creditors (unnamed); that since the Company had no funds it will be necessary to borrow some in some manner. After discussion the meeting was adjourned without action to Monday, October 26, 1931. On October 26, 1931, the meeting reconvened, the purpose of the meeting was again announced, and it was suggested by Mr. Wagner, a director, that a bond issue could probably be obtained for six per cent. There was general discussion but no action, and the meeting adjourned to meet at Des Moines, November 2, 1931. On November 2nd the meeting convened without a quorum and adjourned, convened on November 5th without a quorum and adjourned, and reconvened on November 10th a quorum being present, J. A. Thompson, President, presiding. At this meeting a resolution was presented reciting the existence of the \$50,000 mortgage and default in its payment when due; that there was \$12,000 due McClintic-Marshall Corporation; \$13,000 due Kremer & Hogg; and that the Phoenix Finance System, Inc., had recently advanced to Industrial Contracting Company \$10,000., and other additional obligations aggregating approximately \$40,000., [fol. 41] and after numerous recitals of financial embarrassment, winding up with a proposal to effect a bond issue of \$200,000. and the execution of a mortgage deed of trust to secure the same for the alleged purpose of refinancing the needs of the bridge company. A resolution was unanimously adopted with authority for the president and secretary to employ legal counsel and cause to be prepared the mortgage deed of trust and the bond issue. Then followed a series of additional resolutions authorizing the issue of

bonds to take up the claims of Kremer & Hogg, McClintic-Marshall Corporation, and the \$50,000 mortgage to Phoenix Finance System, Inc.

On December 22, 1931, a special meeting of the stockholders was called at which the Thompson forces controlled 2273 shares, mostly by proxy, and the bond issue carried at the directors' meeting was in form approved, there being 335 scattered votes against the resolution.

Having completed the formalities of the issuance of \$200,000. in bonds, the next step appears to have been to distribute them. At a meeting of the board of directors held March 7, 1932, at which were present the following directors: J. A. Thompson, President, M. K. Thompson, wife of J. A. Thompson, Emory H. English, officer of Phoenix Finance System, Inc., and later a director and officer of Phoenix Finance Corporation, A. B. Wilder, Vice President of Phoenix Finance System, Inc., and later of Phoenix Finance Corporation, Oscar R. Thorson, an employee of the Thompson concerns, and H. T. Wagner. A resolution was adopted disposing of most of the bonds. \$97,000 in bonds were awarded to Phoenix Finance System, Inc., in liquidation of the \$97,000 aggregate of items referred to in the Master's report and \$9,000 only of which the Master found to be based upon a consideration to the Bridge Company. The resolution then continues as follows:

[fol. 42] "Whereas, it has heretofore been ordered by the Board of Directors that the Company re-purchase from Phoenix Finance System, Inc. 517 shares of Class "A" Preferred Stock of the company for a consideration of \$51,700.00 plus interest at the rate of 6% per annum, from January 1, 1931 to January 31, 1932, in the amount of \$3360.50., or a total of \$55,060.50, and by reason of the fact that the corporation is without funds with which to pay the same, and for the further reason that it is impossible to sell or dispose of said bonds at this time, that there be delivered to the said Phoenix Finance System, Inc., Series "B" bonds of the company in sufficient amount to cover the same on a basis of an 8% yield to the said Phoenix Finance System, Inc., and

“Whereas, on that basis Phoenix Finance System, Inc. will be entitled to bonds in the aggregate face amount of \$60,609.86.”

The resolution then awards Phoenix Finance System, Inc., \$60,500 of the bonds. It will be here noted that 517 shares of Class A stock were purchased by Thompson & Company and thereafter transferred to Phoenix Finance System, Inc., at seventy cents on the dollar. So in this transaction there was to be a clean profit to the Phoenix concerns of \$18,870.50, were we to assume that the Bridge Company had any power to repurchase these shares.

The resolution then authorizes the delivery of \$7,400 of bonds in adjustment of an alleged claim made by Helmer N. Anderson. Later \$10,000 in bonds were pledged to the law firm of Bradshaw, Schenk and Fowler to secure \$4,000 attorneys fees. Five \$1,000 bonds were awarded to five certain claimants referred to in the Master's Report and found to be upon adequate consideration and valid. The remaining bonds, the Master says “approximating \$19,000.00 or \$20,000.00,” but which would be exactly \$20,100., were issued to the Phoenix Finance Corporation as se-[fol. 43] curity for a note of \$3,125., given to evidence the payment of that amount by Phoenix Finance Corporation on behalf of the Bridge Company in payment of taxes.

It is proper to say at this point that about the time of the distribution of these bonds or shortly thereafter the Phoenix Finance System, Inc., was liquidated by the simple process of creating a new corporation called the Phoenix Finance Corporation, officered by the same officers as the old one and transferring all of the assets of the old corporation to the new one. The new corporation, created and officered by the same individuals, took over the entire fruits of the activities of the old, so far as concerns this case, and proceeded to carry on with the same notice and purpose, adopting all of the plans and results of its predecessor.

Counsel for plaintiffs—both the Trustees and Phoenix Finance Corporation—have in argument, both oral and in writing, stressed greatly a particular matter which they have injected into the situation in connection with their

exceptions to the Master's Report. After the coming in of the Report plaintiffs caused an examination of the books of the Bridge Company, Standard Shares Holding Company, and certain other documents, some of which were not even in evidence, by Ernst & Ernst, a firm of certified public accountants, and attached the report of such accountants to their exceptions. It is claimed for this report that it points out sufficient matters in the record of this case to demonstrate the erroneous character of the Master's findings and conclusions. I cannot give to this document—accepting the same as a part of counsel's brief—the effect claimed for it. The issue which was clearly and sharply drawn was whether the books and accounts of the Bridge Company, kept under the supervision of Standard Shares Holding Company and Phoenix Finance Corporation, spoke the truth, or whether they were false and largely fictitious. Touching this issue the Ernst & Ernst [fol. 44] report is nothing short of a *petitio principii*. The accountants in the report simply attempt to prove the truthfulness of the books and accounts by resorting to the books and accounts themselves. The accountants frankly say that they made no audit and did not attempt to verify the figures by resource to other sources. In these circumstances I do not see how any weight can be given to the report, even though it were to be considered as a part of the record.

After a careful and laborious examination of the record in this case, I am of opinion that the evidence amply supports the findings of the Master. I am also of the opinion that as applied to the issues and the evidence the Master's conclusions of law are sound and supported by the authorities cited, with some comparatively minor exceptions which I will now deal with.

The Master found that \$10,000. in bonds were pledged to Bradshaw, Schenk and Fowler to secure two notes aggregating \$4,000., and that these bonds are valid to the extent necessary to liquidate the \$4,000 and interest, as having been based upon a consideration to the Bridge Company. The Master's language in subdivisions (h) and (j) of Finding 10, is slightly ambiguous and confusing, but taken as a whole the meaning is clear. The defendant and

interveners' seventh exception is probably technically well taken. These items, however, will be dealt with in a group of other items which I think will do justice to the pledgees.

The Master in conclusion of Law 5 says: "That under the facts above found, it is apparent as a matter of law that the complainants did not furnish the necessary proof to sustain the validity of the bonds, except the bonds specifically named in paragraph ten of the findings of fact, and the *prima facie* showing made in the first instance by the complainants has been overcome by evidence of the defendant and interveners except as to those bonds especially named as having consideration in paragraph ten of the findings of fact, and all the said bonds not named in [fol. 45] said paragraph ten of the findings of fact as having a consideration, are illegal and void because they were issued fraudulently." This conclusion of law is attacked in the defendant and interveners' eighth exception. I think that in so far as the language of the Master's conclusion includes the \$9,000. of bonds held valid in the hands of the Phoenix Finance Corporation, and the \$3,125. in bonds held valid in the hands of the Phoenix Finance Corporation, it is erroneous. What I have said with respect to the legal status of the Phoenix Finance Corporation as the successor of Phoenix Finance System, Inc., places it completely upon a level with its predecessor so far as equities are concerned. With full notice it has adopted everything its predecessor did, and with full notice that its predecessor had at the outset taken 140 shares of stock of the Bridge Company without paying any subscription price therefor and has not accounted for it. I see no reason why a court of equity in this particular instance should not observe the well recognized equitable maxim that "he who hath done iniquity shall not have equity." The allowance of these items would increase the encumbrance to be sustained by the decree to a point where a sale of the bridge could not be avoided. This consideration should not be awarded the plaintiffs at the sacrifice which it would entail.

In view of the conclusions of the Court a decree should be entered overruling the exceptions of the plaintiff trustees, numbered one to eight inclusive, and of Phoenix Fi-



nance Corporation, numbered one to six inclusive, and exceptions reserved to the respective plaintiffs. Defendant and interveners' exceptions one, two, five and ten having been withdrawn, will not be further noticed. The decree should overrule defendant and interveners' exceptions numbered three, four, six and seven, with exceptions reserved to the defendant and interveners, and sustain defendant and interveners' exceptions numbered eight, nine and eleven, with exceptions reserved to the plaintiffs.

With elimination of the \$9,000 item and the \$3,125. item allowed the plaintiffs by the Master, there remains \$15,000 of a charge against the mortgaged property to be protected. This sum is the aggregate of \$4,000 due Bradshaw, Schenk and Fowler, \$6,000 due Helmer N. Anderson and \$1,000 each due Laura B. Baker, J. W. Dempsey, Lyle Sign Company, M. B. Stone, and Cobb, Hoke Benson, Krause and Faegre, or their respective assigns. None of these creditors and holders of bonds are shown to be holders of bonds in due course, but the Master was of opinion, and the Court approves his conclusion, that equity should be done in these circumstances to the extent possible without doing greater injustice to the defendant and interveners. I think a foreclosure of the deed of trust in this case should be denied, because the trust deed and all of the bonds, with the exception of those held by the seven creditors named, are tainted with fraud. And as to those creditors, or their authoritative assigns, equity can be done by a provision of the decree sequestering all earnings and revenues of the Bridge Company over and above such as may be absolutely necessary to pay maintenance, operating expenses and taxes, and retaining the property in receivership until these obligations, with interest, are fully paid; with the option of course to the defendant and interveners to refund this indebtedness in some other manner.

I am of opinion that the entire costs in this case should be assessed to the plaintiffs, and the decree should so provide.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court December 1, 1936."

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[fol. 47]

## Exhibit "B".

## Findings of Fact by the Court.

United States District Court, Northern District of Iowa,  
Eastern Division.

Bechtel Trust Company, and A. H. Schubert, Trustees,  
Plaintiffs,

No. 220. vs. In Equity.

Iowa-Wisconsin Bridge Company, Defendant,

Fayette D. Kendrick, et al., Interveners.

The Master in his Report found the facts as follows, which findings the Court approves and adopts, with the exception of that part of Findings Nos. 8 and 9, and subdivision (a) of Finding No. 10, pertaining to the \$9,000 item paid Kramer & Hogg, which the Master finds the Bridge Company received consideration for, and in that connection reduces the \$97,000. aggregate to \$88,000; and also with the exception of subdivision (i) and (k) of Finding No. 10, wherein the Master finds that \$3,125. of the bonds pledged to Phoenix Finance Corporation, were issued upon a consideration to the Bridge Company:

"1. That on the 20th day of February, 1932, a deed of trust was issued by the defendant, Bridge Company, dated as of the first day of January, 1932, to secure a bond issue of \$200,000.00 and the complainants are now the trustees under said deed of trust.

"2. That as of January 1, 1932, the said Bridge Company purported to authorize the issuance, under said trust deed, of bonds in the amount of \$200,000.00, and that bonds in such amount were issued by the Bridge Company.

"3. That the principal on the said bonds, together with interest and taxes, as alleged in the complaint, are in default.

"4. (a) That John A. Thompson, above named, before [fol. 48] the issuance of the said bonds and before the authorization of the said trust deed, came into the control and management of the defendant, Bridge Company, either directly or through the standard Shares Holding Company.

“(b) That during all that time and during the times hereinafter named, the said Thompson also controlled the Phoenix Finance System, Inc., and other affiliated companies.

“5. That while the Articles of Incorporation of the Bridge Company contain the provisions set forth in paragraph seven of the interveners' petition of intervention, the Bridge Company, through the influence of the said Thompson and his associates, caused \$60,500.00 of the said bonds to be issued to the said Thompson, or to the said Phoenix Finance System, Inc., or affiliated companies in exchange for Class A stock then held by the said Thompson or his owned and controlled institutions. When that was done, there was outstanding other Class A stock held by other stockholders who were not given the permission or opportunity by the Bridge Company, as was the said Thompson and his affiliated companies, to surrender such Class A stock and receive bonds, as did the said Thompson and his institutions. That no notice of the intention of the corporation to redeem said Class A shares was mailed or given to holders of such stock, as required by said paragraph seven of the Articles of Incorporation, except to the said Thompson and his controlled companies. That in other words, all of the said Class A stock was not purchased by the Bridge Company at said time through the issuance of the said bonds or otherwise; nor was a portion of the said Class A stock redeemed proportionately, as provided by the Articles of Incorporation set forth in paragraph seven of the petition of intervention. And at said time the said Class A stock was thus surrendered by the said Thompson without notice to other similar stockholders of such transaction, and that such transaction took place without a legal authorizing vote on the part of the stockholders or directors of the Bridge Company. That [fol. 49] so far as Thompson and his associates were concerned, they were voting under the influence of Thompson, but so far as independent stockholders and directors were concerned they did not know the true facts when they voted for the pretended authorizing resolution.

“6. That during all the times material there was in effect in the State of Delaware a statute, as set forth in paragraph eight of the petition of intervention. That when

the said Thompson and his companies exchanged the said Class A stock for the said bonds in the amount of approximately \$60,500.00, such action caused an impairment of the capital of the corporation, in violation of the said Delaware statute.

"7. That the action of the said Thompson, in promoting the said exchange of Class A stock for the said bonds, was fraudulent and for the purpose of conferring upon himself a preference over other holders of Class A stock. That by thus conspiring and acting fraudulently, the said Thompson did acquire a preference over other holders of such Class A stock.

"8. That \$97,000.00 of the said bonds were transferred by the corporation to the said Thompson, or his controlled companies on a pretended book account originating out of a pretended mortgage of \$50,000. covering an obligation for which J. W. Shaffer & Company already was duty-bound to perform in constructing the superstructure of the bridge, with the exception of an item amounting to \$9,000.00 paid to Kramer & Hogg to settle a claim based upon a mechanic's lien. That although the contract between the Bridge Company and the said Shaffer & Company provided for a surety bond to insure the obligation of the said Shaffer & Company, yet the said Thompson, in manipulating and scheming and conspiring, omitted having the said Shaffer & Company furnish such bond, and that under the pretended omission of the said Shaffer & Company to furnish such bond, the said John A. Thompson, through his controlled companies, pretended to perform [fol. 50] the obligation which the said Shaffer & Company should have performed. That the said Thompson and his companies did not, in fact, perform such obligation on behalf of the said Shaffer & Company, but simply built up a pretense on the books of the various companies to make it falsely appear that the said Shaffer & Company failed to perform its duty, and that the said Thompson, or his controlled companies expended the said \$97,000.00 in so doing. But, as a matter of fact, the said Thompson and his controlled companies did not thus expend \$97,000.00, but only expended the said \$9,000.00 thereof paid to the said Kramer & Hogg, as aforesaid, and therefore there was no consideration for \$88,000.00 of the said \$97,000.00 of the

Bridge Company bonds thus issued to the said Thompson or to his controlled companies; but there was consideration for the said \$9,000.00 of the said bonds thus issued on the said Kramer & Hogg claim. That the said pretense and scheme on the part of the said Thompson was for the purpose of obtaining \$88,000.00 of the said \$97,000.00 of the said bonds without consideration.

"9. That the resolutions pretended to have been passed by the Bridge Company authorizing the said \$97,000.00 issue of the said bonds were not genuine, legal resolutions so far as the same related to the said \$88,000.00 of the said bonds, but such resolutions relating to the said \$88,000.00 of the said bonds were adopted through the influence and connivance of the said Thompson and his associates, so far as the said Thompson and said associates were concerned. Independent directors and stockholders who supported such resolution did so not knowing of the true facts relating thereto, but such independent stockholders and directors were deceived and misled by the representations of said Thompson. That in truth and in fact, such resolutions were invalid and of no effect.

"10. (a) That of the bonds above named, the Bridge [fol. 51] Company received full consideration for the said \$9,000 thereof issued to Kramer & Hogg in settlement of a mechanic's lien claim.

"(b) That of the remaining bonds \$7,400.00 thereof were issued to Helmer N. Anderson for a consideration to the Bridge Company of \$6,000.00, in consideration of the purchase of a leasehold and other interest in real estate belonging to the Bridge Company. So, to the extent only of the said \$6,000.00 did the Bridge Company receive consideration in this transaction.

"(c) That of the remaining bonds, the \$1,000.00 thereof issued to Laura B. Baker in compromise settlement of a suit against the Bridge Company was based upon a consideration received by the Bridge Company in that amount.

"(d) That of the remaining bonds, the \$1,000.00 thereof issued to J. W. Dempsey in compromise settlement of a general claim against the corporation was based upon a consideration received by the Bridge Company in that amount.

“(e) That of the remaining bonds, the \$1,000.00 thereof issued to the Lyle Sign Company in compromise settlement of a disputed account for road signs was based upon a consideration received by the bridge company in that amount.

“(f) That of the remaining bonds, the \$1,000 thereof issued to M. B. Stone, an engineer of Minneapolis, Minnesota, in compromise and release of a mechanic's lien claim against the corporation was based upon a consideration received by the Bridge Company in that amount.

“(g) That of the remaining bonds, the \$1,000.00 thereof issued to Cobb, Hoke, Benson, Krause, and Faegre, attorneys of Minneapolis, Minnesota, in full compromise and settlement of a claim for legal services against the Bridge Company was based upon a consideration received by the Bridge Company in that amount.

“(h) That of the remaining bonds, \$10,000.00 thereof were issued to Bradshaw, Schenk & Fowler, attorneys at [fol. 52] law, as security for two notes given by the Bridge Company to the said Bradshaw, Schenk & Fowler in the aggregate amount of \$4,000 and to the extent of the principal of, and interest on, the said notes, the corporation received consideration for the said bonds, and to that extent only the said bonds are valid.

“(i) That the remaining bonds, approximating \$19,000 or \$20,000, were issued to the Phoenix Finance Corporation as security for a note of \$3,125.00 given in part to secure the payment of that amount made by the said Phoenix Corporation on behalf of the Bridge Company to pay taxes of the Bridge Company in the State of Wisconsin. That to the extent of the principal of, and interest on, the said note only the said bonds are valid, but to no other extent are these particular bonds valid.

“(j) That of the bonds above named, held by Bradshaw, Schenk & Fowler in the amount of approximately \$6,000.00 not necessary to secure the said notes aggregating \$4,000.00 and interest are without consideration and invalid.

“(k) That of the bonds above named issued to the Phoenix Finance Corporation to secure the said note of \$3,125.00, the amount of bonds not necessary for such se-



curity, approximating the sum of \$16,975.00, are without consideration, obtained by fraud, and invalid.

11. That the said Thompson, speaking for himself and the Phoenix Finance System, Inc., and his other affiliated institutions, admitted that he and the said institutions owned at least ninety per cent of the total \$200,000 bond issue, and now hold the same.

"12. That as alleged in paragraph 18 of the petition of intervention, any demand before the commencement of this suit that might have been made by the interveners to obtain relief from the issuance of the said bonds from and through the said defendant corporation would have been unavailing.

[fol. 53] "13. That the Bridge Company was not making, and would not have made, a good faith defense to the complainants' action had not the interveners intervened. That while attorneys Haehlen and Hart were conscientious in their efforts and took the part of faithful and capable lawyers in the litigation, yet they were so handicapped by the corporation, as is indicated by the evidence, that they could not have successfully defended without the interveners.

"14. That the interveners and the defendant are not estopped from making their defense. This is true because the purported ratification and estoppel claimed by the complainants in their reply was brought about through the same connivance and control of the said Thompson as was the original conspiracy and fraud, and that so far as the independent stockholders and directors are concerned, they did not know of the fraud and conspiracy when taking any action that might otherwise amount to estoppel or ratification."

The defendant and interveners have proposed and asked that the Master's findings as approved by the Court, be amplified by additional findings, and the Court being of opinion that the proposed additional findings are supported by the evidence, finds the facts requested as follows:

1. That First Trust & Savings Bank is now and at all times herein mentioned has been a corporation duly organized and existing under and by virtue of the laws of the



State of Iowa, with its principal place of business in the City of Davenport in said State, and is a citizen and resident of the State of Iowa. That said First Trust & Savings Bank is the successor of Bechtel Trust Company, as trustee in the mortgage deed of trust hereinafter referred to.

2. That the defendant, Iowa-Wisconsin Bridge Company, is now and at all times herein mentioned has been a [fol. 54] corporation duly organized and existing under and by virtue of the laws of the State of Delaware, with its principal office in the City of Wilmington in said State, and is a citizen and resident of said State; and that it is and has been at all times herein mentioned duly authorized to transact business in the states of Iowa and Wisconsin.

3. That the intervener, Fayette D. Kendrick, is a citizen and resident of the state of Minnesota and is and has been since December 15, 1930, a stockholder of the defendant corporation, Iowa-Wisconsin Bridge Company. That his petition in intervention in the above entitled action was filed by leave of court first had, and was on behalf of himself and all other stockholders similarly situated.

4. That the interveners, Warren G. Hayes, T. H. Bakewell and Anna W. Schuster, are citizens and residents of the State of Iowa, and the intervener, Ernest W. Haverland, a citizen and resident of the State of Minnesota; that each of them is and prior to the acts complained of in the petition of intervention was a stockholder of the defendant corporation, Iowa-Wisconsin Bridge Company. That their petition in intervention in the above entitled action was filed by leave of Court first had, and was on behalf of themselves and all other stockholders similarly situated.

5. That this controversy when commenced was wholly between citizens of different states and the jurisdiction of the Court was based upon diversity of citizenship.

6. That the matter in controversy, exclusive of interest and costs, exceeds the sum or value of \$3,000.

7. That on or about February 20, 1932, the officers of the Iowa-Wisconsin Bridge Company executed and delivered to Bechtel Trust Company and A. H. Schubert as Trustees, a mortgage deed of trust, dated as of January 1, 1932, wherein said Iowa-Wisconsin Bridge Company, as

mortgagor, for the purpose of securing the payment of the [fol. 55] \$200,000 of bonds in these findings referred to, purported to mortgage to Bechtel Trust Company and A. H. Schubert as Trustees, the real and personal property of said Iowa-Wisconsin Bridge Company in the States of Iowa and Wisconsin, which property is fully described in said mortgage deed of trust, as recorded, to which reference is hereby made. That said mortgage deed of trust was recorded in Allamakee County, Iowa, on February 26, 1932, at 1:20 o'clock P. M., as a mortgage of city, town and village lots, and as a mortgage of lands other than city, town and village lots, and as a chattel mortgage, and recorded in Book 52 of Land Mortgages on page 259 of the records of said Allamakee County, and was also filed for record in Crawford County, State of Wisconsin, on the 27th day of February, 1932, at 8:30 o'clock A. M., and recorded in Volume 136 of D. page 500 of the records of said Crawford County. That wherever in these findings a deed of trust of the Bridge Company is referred to, reference is had to the mortgage deed of trust last above described, and the bonds referred to in these findings are those described in said mortgage deed of trust.

8. That Phoenix Finance Corporation, complainant and defendant to petition in intervention, is the successor in interest of Phoenix Finance System, Inc., and subject to all defenses and offsets to which said Phoenix Finance System, Inc., was at any time subject.

9. That this action was instituted by the plaintiffs herein as trustees upon the demand of Phoenix Finance Corporation, as owners and holders of \$177,600 of the \$200,000 of the bonds involved herein.

That said Phoenix Finance Corporation referred to agreed to secure and indemnify said trustees against all costs, expenses and liabilities incurred by them in taking the action demanded; and also designated the attorneys to be employed by the trustees, and agreed to save the trustees [fol. 56] harmless on account of any claim by said attorneys for fees and expenses in connection with the litigation.

10. That the Lansing Bridge Company, a Delaware corporation, was organized on or about March 20, 1928, to con-

struct and operate a bridge across the Mississippi River from Lansing, Iowa, eastward to the Wisconsin shore. On or about June 11, 1928, the name of the Bridge company was changed to Iowa-Wisconsin Bridge Company.

On or about March 10, 1928, the United States Congress authorized the Bridge Company to construct a toll bridge across the Mississippi River from Lansing, Iowa, to De Soto, Wisconsin.

Originally, the stock of the Bridge Company consisted of five thousand shares of no par value, but later, the capital stock was changed by dividing the stock into common and preferred stock, as follows: Five thousand shares of no par value common stock, and fifteen hundred shares of preferred stock, at \$100. per share par. Later, the capital stock was again changed to four thousand shares of preferred stock, \$100 par value, known as Class A stock, and six thousand shares common no par Class B stock. August 23, 1930, the Articles again were amended so that the preferred, or Class A stock, was fixed at thirty-seven hundred fifty shares of \$100. par value per share, and thirty-seven hundred fifty shares of common Class B stock without par value.

11. That the articles, as amended, provided that if less than all shares of Class A stock were redeemed, the selection of shares to be redeemed must be made by lot or pro rata and that thirty days written notice of intention to redeem must be mailed to holders of record of the stock to be redeemed.

12. That at all times involved in this action the statutes of Delaware provided that no corporation should use its funds or property to purchase its own stock, when such use [fol. 57] would impair the capital of the corporation.

13. The bridge was originally promoted in 1929 by certain Lansing, Iowa, residents who engaged V. W. O'Connor and John W. Shaffer of Minneapolis, Minnesota, as promoters of the Bridge Company.

14. John W. Shaffer owned all of the stock of the Standard Shares Holding Company, except qualifying shares of other directors, and also owned all of the stock of John W. Shaffer & Company, except directors' qualify-

ing shares. John W. Shaffer and Vernon O'Connor as promoters of the Bridge Company acted through the medium of the Standard Shares Holding Company and John W. Shaffer & Company.

15. The Standard Shares Holding Company became and was trustee of the Iowa-Wisconsin Bridge Company in the sale of the Bridge Company stock and in construction of the bridge. On October 26, 1929, a contract was made between the Iowa-Wisconsin Bridge Company and Standard Shares Holding Company, by which the latter was designated as trustee of the Bridge Company. Under this contract the trustee was to proceed with the construction of the bridge, the cost of which should not exceed \$500,000. It was agreed that the Bridge Company should have a gross capitalization of 4000 shares of Class A stock, par value \$100. per share and 6000 shares no par value Class B stock.

While the Standard Shares Holding Company thus acted as trustee, it held a majority of the outstanding voting stock of the Bridge Company.

16. On November 9, 1929, a contract was made between John W. Shaffer and the Bridge Company, employing Shaffer as engineer of the bridge project, for ten per cent of the total construction cost. This contract was assigned to John W. Shaffer & Company, April 4, 1930.

17. On December 7, 1929, Standard Shares Holding [fol. 58] Company as trustee for the Bridge Company, acting by J. W. Shaffer, entered into a contract for grading with V. W. O'Connor, the partner and co-promoter of John W. Shaffer, at the rate of 24¢ per cubic yard of excavation. This contract was immediately sublet by O'Connor to Kramer & Hogg at 15¢ per cubic yard. On April 4, 1930, O'Connor assigned the original contract to John W. Shaffer & Company.

18. In December, 1929, Standard Shares Holding Company as trustee for the Bridge Company, acting by J. W. Shaffer, contracted with V. W. O'Connor, Shaffer's partner and co-promoter, to erect the substructure of the bridge, said contract calling for payment of a total of \$193,196.80, estimates to be approved and work to be ac-

cepted by Shaffer, the engineer. The approval of this contract by the Bridge Company was signed by Shaffer as secretary of the Bridge Company. The contract was immediately sub-let by O'Connor to Industrial Contracting Company for a maximum total of \$120,748. On April 4, 1930, this contract was assigned by O'Connor to John W. Shaffer & Company. The amount actually paid the subcontractor for completion of this work was \$97,971.36. On April 4, 1930, when O'Connor assigned the aforesaid contracts to John W. Shaffer & Company, the Standard Shares Holding Company held 4000 shares of the voting stock of the Bridge Company out of 6441 outstanding, and at that time Shaffer resigned as secretary of the Bridge Company and his secretary M. Lockhart became secretary and O'Connor president of the Bridge Company.

19. John A. Thompson was interested in and with his wife M. K. Thompson and associates, A. B. Wilder and Emory H. English, controlled the Phoenix Finance System, Inc., and other affiliated companies. Thompson & Company was a wholly owned subsidiary of the Phoenix Finance System, Inc. M. White was John A. Thompson's secretary and an officer of Phoenix Finance System, Inc.

20. In October and November, 1930, through negotiations with John W. Shaffer and Vernon W. O'Connor, [fol. 59] John A. Thompson became president of an acquired control of the Bridge Company. At about the same time, the number of directors of the Bridge Company was increased and Thompson together with other directors of the Phoenix Finance System, Inc., became directors of the Bridge Company. From that time on, Thompson controlled the Bridge Company. At that time Thompson acquired and had full knowledge of the contents of the contracts and assignments and sub-contracts above set forth and of the relationships of the parties thereto between themselves and to the Bridge Company.

21. On November 26, 1930, a stated settlement as of October 31, 1930, was made between the Standard Shares Holding Company and the Bridge Company, under which there were delivered to the Bridge Company by its trustees,



liquid assets, such as cash, bills and accounts receivable, stocks and bonds, inventoried at \$90,235.68; construction accounts representing amounts which had been paid for construction to date aggregating \$183,496.90 and equipment, etc., amounting to \$1,986., and commission and organization and expense accounts amounting to \$75,231.08, making a total of \$350,950., and there had been sold by said trustee for the account of the Bridge Company stock of the latter at \$100. per share, amounting to \$350,950. The settlement also provided for the return of all stock of the Bridge Company held by said trustee except 1500 shares of Class B stock, which were returned to the Bridge Company in consideration of a so-called management contract, the terms of which are immaterial in this litigation. On the \$90,935. of liquid assets, there was later realized over \$79,000. in cash and the Bridge Company had treasury stock in the amount of \$290,050. to build its super-structure and complete its bridge. The substructure was practically complete and the sub-contractor thereof had been paid within \$8200. of the total cost and the grading was well under way.

22. Under date of November 11, 1930, a contract for [fol. 60] the completion of the bridge was entered into between the Bridge Company, acting through John A. Thompson as president and John W. Shaffer & Company, which included erection of super-structure of the bridge, erection of piles and trestles over certain sloughs, erection of toll house, etc., and surfacing of roadway and whereby the Bridge Company agreed to and did pay \$10,000. in cash and agreed to and did deliver 3200 shares of its capital stock at a fixed price of \$320,000., to John W. Shaffer & Company, and Shaffer and Company, in said contract agreed to furnish a surety bond to insure the obligations of said Shaffer & Company. Extras were required to be ordered in writing. John W. Shaffer & Company sublet the contract for steel to McClintic-Marshall Company and the construction work to the Industrial Contracting Company.

23. In November, 1930, immediately after the issuance of said 3200 shares of stock to Shaffer & Company, the latter company sold said stock to Thompson & Company and received the promissory note of Thompson & Company for \$224,000. therefor.



24. An agreement dated November 10, 1930, was executed by Phoenix Finance System, Inc., signed by John A. Thompson, president, and his wife M. K. Thompson, secretary, and by John W. Shaffer & Company, signed by John W. Shaffer, and by the Iowa-Wisconsin Bridge Company, signed by V. W. O'Connor, chairman of the board and M. E. Lockhart, secretary. At this time John A. Thompson was also president of the Bridge Company. This agreement recites a delivery to Phoenix Finance System, Inc., by the Bridge Company of 140 shares of Bridge Company stock; that Phoenix Finance System, Inc., agrees to guarantee the payments required to be made by Shaffer & Company to McClintic-Marshall & Company and Industrial Contracting Company, sub-contractors of John W. Shaffer & Company; Shaffer & Company agrees to make the payments guaranteed and to pay to Phoenix Finance System, Inc., any amounts advanced under the guaranty and the Bridge Company purports to agree that if Shaffer & Company "shall fail to pay and discharge all the payments aforesaid and/or first party (Phoenix) is required to ad-[fol. 61] vance any sums of money by reason of any endorsement or guaranty in connection with the financing of said Blackhawk Bridge," The Bridge Company shall pay Phoenix "a sum equal to the amount due first party (Phoenix) from all causes in connection with said financing of said bridge." No consideration passed to the Bridge Company for the purported undertaking on its part, the Bridge Company having paid the full consideration for the completion of the bridge and the sub-contractors having no contract with the Bridge Company, but being under contract with Shaffer & Company and the purported guaranty of the sub-contractors' contracts to Shaffer & Company, did not constitute a consideration to the Bridge Company. John A. Thompson, who was then president of the Bridge Company, dominated and controlled such company through and with his associates John W. Shaffer and V. W. O'Connor as a part of a plan and scheme. Thompson, in making said contract acted in a dual capacity, adversely to the interests of the Bridge Company and in violation of his duty as an officer thereof. V. W. O'Connor, in executing said contract as chairman of the board of directors, for the Bridge Company did so under the direction of and acting wholly in reliance on the statements and supposed fidelity and integ-

rity of Thompson without examination of the contract and without regard to the interests of the Bridge Company. The meeting of stockholders on November 26, 1930, at which said agreement is claimed to have been approved, was dominated and controlled by John A. Thompson by himself and through his associates John W. Shaffer and V. W. O'Connor. Said agreement was a fraud upon the Bridge Company and its stockholders.

That the Articles of Incorporation of the Bridge Company provided "that so long as any of the Class A stock shall be outstanding, the corporation shall not (except for the purposes of redeeming all of the Class A stock) unless with the affirmative vote or written consent of the holders of at least two-thirds in amount of the then outstanding [fol. 62] Class A stock; \* \* \*

"(c) Guarantee the payment of obligations or stock of other corporations (except obligations of subsidiary corporations incurred in the usual course of business.)" That at said time there was Class A stock outstanding and consent was not given by affirmative vote nor in writing of the holders of stock, two-thirds in amount of such outstanding Class A stock, nor on the part of the holders of any of such Class A stock for the execution of any such contract. That Phoenix Finance System, Inc., and its president John A. Thompson, who was then also president of the Bridge Company, had full knowledge and were charged with full knowledge of said provisions in the Articles of Incorporation of the Bridge Company. That the foregoing contract was ultra vires and void.

25. That about February 5, 1931, John A. Thompson engaged Elliott-Rodgerson Company, as brokers to sell stock purchased by Thompson & Company from Shaffer & Company and personally and on behalf of Phoenix Finance System, Inc., represented to the public that there would be no mortgage or bonds placed against the bridge and said Phoenix Finance System, Inc., represented and agreed in writing signed by John A. Thompson as president that there was no funded indebtedness against the bridge and that Phoenix Finance System, Inc., had unconditionally guaranteed the payments to McClintic-Marshall Company and to Industrial Contracting Company, and had agreed to pay

for the completion of the bridge; that if all the money to be paid sub-contractors was not raised through stock sales as needed, the deficiency would be promptly supplied by Phoenix Finance System, Inc., to be repaid to it as later stock sales accumulated funds for that purpose. Thompson did not disclose any purported contract of indemnity by the Bridge Company to Phoenix Finance System, Inc., or that he had any intention of placing any mortgage on the bridge.

[fol. 63] 26. A stockholders' meeting of the Bridge Company was held March 10, 1931, which was controlled by the stock of Thompson & Company and John A. Thompson, 1310 shares and proxies held by Thompson 375 shares, a total of 1685 shares out of 2586 shares represented, at which meeting a board of directors was elected controlled by said Thompson. Following said stockholders' meeting, a directors' meeting was held attended only by Thompson directors, viz., V. W. O'Connor, John A. Thompson, A. B. Wilder and Oscar R. Thorson. At this meeting, there was passed a purported resolution providing for the issuance of a \$50,000. mortgage to the Phoenix Finance System, Inc., on the properties of the Iowa-Wisconsin Bridge Company which resolution contained the false and fraudulent recital that funds received from sale of stock had been inadequate to properly finance the rapid completion of the bridge; whereas, the bridge company then had nothing to do with the sale of stock and it had delivered to J. W. Shaffer & Company \$320,000 of its stock and \$10,000 in cash for the completion of the bridge. That pursuant to such resolution a mortgage was executed to Phoenix Finance System, Inc., for \$50,000 signed on behalf of the Bridge Company by A. B. Wilder who was then also an officer and director of said mortgage company. That in truth and in fact no indebtedness of said Bridge Company to the Phoenix Finance System, Inc. existed and the bridge company received no consideration for the execution of said mortgage; that the same was and is wholly without consideration, fraudulent and void. At said time said Thompson caused entries to be made on the books of said Bridge Company purporting to show the receipt of \$50,000 in cash, whereas, in truth and in fact, said amount and no part thereof was received by the Bridge Company.

Said Thompson caused entries to be made on the books of the Bridge Company as though the following payments were made, \$25,000. on sub-structure, \$5,000. on grading [fol. 64] and \$5,000. on engineering, when in truth and in fact, no such payments were made in any form, and also caused entries to be made on the Bridge Company's books as though the Bridge Company owed \$15,000. to Thompson & Company, wholly owned subsidiary of Phoenix Finance System, Inc., when in truth and in fact there was nothing due from the Bridge Company to Thompson & Company or Phoenix Finance System, Inc., but on the contrary there was due over \$3,000. from Thompson & Company to the Bridge Company and the aforesaid entries were wholly false.

27. That about the 1st of November, 1930, 140 shares of Bridge Company stock were issued to Phoenix Finance System, Inc., and the value thereof fixed at \$100 per share, to-wit: \$14,000. That upon the issue of such stock Phoenix Finance System, Inc., became indebted to the Bridge Company for said amount. That such amount has not been paid. That the Phoenix Finance System, Inc., disposed of such stock to the public. That thereafter John A. Thompson, then president of the Bridge Company, dominating and controlling the Bridge Company, and his associates caused the execution of a purported guaranty contract providing for the turning over to the Phoenix Finance System, Inc., such stock without payment therefor. That in such transaction John A. Thompson acted in a dual capacity as president of the Bridge Company and as president of the Phoenix Finance System, Inc., and acted in the interests of himself and his affiliated companies as against the interests of the Bridge Company and dealt with himself in such transaction. That the Bridge Company has not received consideration for the aforesaid stock and that there is due the Bridge Company on account thereof the sum of \$14,000 with interest. That Thompson & Company was a wholly owned subsidiary of Phoenix Finance System, Inc., and was used as an instrumentality, conduit, adjunct and agent of the Phoenix Finance System, Inc., That items chargeable against one are also chargeable against the other.

[fol. 65] 28. That John A. Thompson on November 5, 1930, purchased 65 shares of Bridge Company stock from

the Bridge Company at \$100. per share, and on the same day A. B. Wilder, also a director of the Bridge Company, purchased 10 shares of Bridge Company stock from the Bridge Company at \$100. per share. That on the 31st day of December, 1930, Thompson & Company purchased 170 shares of Bridge Company stock from the Bridge Company at \$100. per share. That subsequent to such purchase of stock by John A. Thompson and A. B. Wilder on the 31st day of December, 1930, the said John A. Thompson, through his dominant control of the Bridge Company, credited to Thompson & Company on the books of the Bridge Company 15% commission on all of the aforesaid stock in the sum of \$3,675. That it was the duty of John A. Thompson and A. B. Wilder as directors of the Bridge Company to assist in selling stock owned by the Bridge Company. That in the selling of said stock no exceptional or extraordinary services were rendered and they were not entitled to credit for said commissions.

29. That about the 11th of March, 1931, John A. Thompson and his affiliated companies, through the dominant control of the Iowa-Wisconsin Bridge Company, caused a payment of \$3,000 to be made from the funds of the Bridge Company to A. B. Wilder through the medium of checks issued to John W. Shaffer and immediately endorsed and delivered to A. B. Wilder, and \$1000. thereof was then turned over to Thompson & Company by said Wilder. That the said Wilder was then an officer and director of the Phoenix Finance System, Inc., and also a director of the Bridge Company. That no resolution was passed by the stockholders or directors of the Bridge Company authorizing such payments to said Wilder nor was there any action taken or resolution passed by the Bridge Company providing for the payment of any amount to said Wilder for services nor had there been nor were there any exceptional or extraordinary services rendered by said Wilder to the Bridge Company. That no consideration passed to [fol. 66] the Bridge Company for such sums. That the said Thompson and his affiliated companies controlling the Bridge Company, so manipulated its books as to cause fictitious entries to be made thereon as though said sums were paid on approaches, when in fact no work was done on approaches for which said sums or any part thereof was



a proper payment. That payment of said amounts was a misappropriation of the Bridge Company's funds.

30. That on the 1st day of November, 1931, John A. Thompson and his affiliated companies through the exercise of dominant control of the Bridge Company turned over to the Bridge Company \$5,410.85 of notes taken by Thompson & Company in the sales of Bridge Company stock owned by Thompson & Company and with which Thompson & Company held as collateral such stock sold by it. That substantially all of said notes were worthless. That said Thompson & Company took or received from the Bridge Company \$5,410.85 for such notes. That in such transaction John A. Thompson acted in a dual capacity as president of the Bridge Company and as president of the Phoenix Finance System, Inc., and controlling its subsidiary Thompson & Company and acted in the interests of himself and his affiliated companies against the interests of the Bridge Company and dealt with himself in such transaction. The Bridge Company at the time of such transaction did not have any surplus from which it could purchase any of its stock.

31. That notwithstanding the alleged mortgage Thompson & Company continued to sell its bridge stock through its agents at \$100. per share, on the representation that the Bridge Company had no funded debt, and concealed the fact of the existence of said mortgage from stockholders and directors of the Bridge Company.

32. That on August 6, 1931, John W. Shaffer & Company owed Industrial Contracting Company \$10,000; Mc-[fol. 67] Clintie-Marshall Company \$11,262.71, and to Kramer & Hogg an amount, then in dispute; Shaffer & Company also claimed to be entitled to payment for certain extra steel; certain extra labor and material, and commissions. There were also other matters in dispute between the Bridge Company and Shaffer & Company with reference to the bridge contracts. To make a complete settlement a stated settlement contract was made August 6, 1931, between the bridge company, as party of the first part, and John W. Shaffer, V. W. O'Connor, John W. Shaffer & Co., and Standard Shares Holding Company, as parties of the second part, which was executed on behalf



of the Bridge Company, by J. A. Thompson as president and which provided:

(a) That the Bridge Company transfer to the other parties to the contract 120 shares of its common stock and 80 shares of its preferred stock and certain other securities which were of the value of \$2,475., and pay to Kramer & Hogg the balance due them.

(b) That the second parties (Shaffer, O'Connor, Standard Shares Holding Company and Shaffer & Company) accept such consideration "as full and complete settlement of all sums due them and/or any of them and for full satisfaction and stated settlement of any and all claims of all kinds whatsoever arising out of any contract or other relations between the parties hereto and/or pertaining in any way to said toll bridge and second parties separately and jointly hereby release said Iowa-Wisconsin Bridge Company fully and completely. Second parties hereby specifically acknowledge receipt of full payment for all engineering, designing and building of said bridge, and for all material, services and all other things pertaining to said bridge."

The Bridge Company, pursuant to this contract delivered 200 shares of its stock of the value of \$20,000 and other securities of the value of \$2,475.

33. That at about the same time John W. Shaffer agreed to and did turn over to Thompson of Thompson & [fol. 68] Company, and president of the Phoenix Finance System, Inc., \$10,000. Of the Bridge Company stock (100 shares received by Shaffer) and Thompson and Company agreed to pay \$10,000 owing to the Industrial Contracting Company and \$11,262.71 owing to the McClintic-Marshall Company. Neither the Industrial Contracting Company nor the McClintic-Marshall Company had any contract with the Bridge Company, nor was the Bridge Company indebted to them in any amount.

That by the aforesaid assumption the Phoenix Finance System, Inc., through its subsidiary and instrumentality, Thompson & Company, relieved and discharged John W. Shaffer & Company from paying either of said amounts. That if there was any validity in the alleged guaranty con-

tract dated November 10, 1930, when Phoenix Finance System, Inc., through John A. Thompson and Thompson & Company, as obligee in said contract, thus released said Shaffer & Company, the Iowa-Wisconsin Bridge Company as claimed surety was released and discharged.

34. On September 24, 1931, the Industrial Contracting Company drew a sight draft on Phoenix Finance System, Inc., for the balance of \$10,000. due them which Thompson & Company had agreed to pay and for which the Bridge Company was not liable. As a part of the fraudulent scheme and plan, leading up to the issuance of the bonds here involved, said John A. Thompson caused entries and deposits and withdrawals on the Bridge Company's records to be made, purporting to show that Phoenix Finance System, Inc., had advanced to the Bridge Company the sum of \$10,000., and that the Bridge Company had made payment of said sight draft, and pretended thereby to show an indebtedness of \$10,000. due from the Bridge Company to Phoenix Finance System, Inc., whereas, in truth and in fact, the said amount was an obligation of Thompson & Company and not of the Bridge Company, and nothing was due from the Bridge Company to Phoenix Finance System, Inc., on account thereof.

35. That on November 11, 1931, a meeting of the directors of the Bridge Company was held at which a majority present were dominated by John A. Thompson, as president. At this meeting it was represented by John A. Thompson that there was due the Phoenix Finance Corporation \$54,000. on the purported mortgage of March 10, 1931, and \$10,000. for money advanced Industrial Contracting Company; and that there was other indebtedness including a claim of McClintic-Marshall Company for \$12,000. and further obligations aggregating \$40,000. That at said meeting resolutions were adopted providing for a bond issue of \$200,000; for a stockholders' meeting to consider the bond issue; for the delivery of bonds to pay the \$50,000. mortgage; and for the payment of other alleged claims.

36. On the same date, a letter prepared at the dictation of John A. Thompson, and signed by Oscar R. Thorson, as secretary-treasurer, of the Bridge Company, under his direction was sent to the stockholders of said Bridge

Company. In said letter it was falsely and fraudulently represented to the stockholders of the Bridge Company for the purpose of inducing said stockholders to approve the proposed bond issue of \$200,000., and to induce them to forward proxies to said Thompson and his associates, as follows;

(a) "That in October, 1930, negotiations were opened with Phoenix Finance System, Inc., to lend its aid in arranging for the financing of the completion of the bridge and to save the project from absolute failure.

(b) That there was an understanding that the Phoenix Finance would be repaid by the Bridge Company on demand for any such advances that might be required to be made by it temporarily in order to fulfill the guarantee and to permit the continuation of work on the bridge.

(c) That sale of stock to the public showing no improvement and in order that the work on the bridge might not be delayed, Phoenix Finance System, Inc., made substantial advances.

[fol. 70] (d) That construction of the bridge went forward without delay and the cash required for material and labor was advanced regularly by the Phoenix Finance Company.

(e) That there had been advanced by the Phoenix Finance System, Inc., to the Bridge Company in the payment of bills for labor and material to complete the bridge approximately \$70,000., \$50,000. of which is secured by a mortgage which was due December 10, 1931.

(f) In addition to the sum of \$70,000. which has been advanced by the Phoenix Finance System, Inc., there will be immediately required the further sum of approximately \$25,000. to complete payment of outstanding obligations.

(g) The board of directors was confronted with the problem of raising additional funds with which to satisfy the claims of Kramer & Hogg and McClintic-Marshall and Company in order to prevent threatened liens and litigations to collect these accounts.

(h) There was never intended that this cash advanced by Phoenix Finance System, Inc., to the Bridge Company should be of a permanent nature and it must be repaid.

That the aforesaid representations were misleading, false and fraudulent.

37. That following the aforesaid letter, notice of a proposed stockholders' meeting for December 22, 1931, with form of proxy running to Emory H. English, Oscar R. Thorson and J. H. Thompson enclosed was sent to Class B voting stockholders and the fraudulent statements contained in the letter of November 11, 1931, were not corrected, nor was any true information given with respect thereto. That said notice called for a special meeting of Class B voting common stock, to consider and authorize directors to borrow, not to exceed \$200,000; to authorize the execution of mortgage bonds, not to exceed that amount, and to provide the terms and conditions under which such bonds [fol. 71] should be issued; to authorize the directors to convey to a named trustee by mortgage deed of trust all of the property and assets of the company to secure the payment of principal and interest of such bonds; to authorize the directors to sell, pledge or otherwise dispose of such bonds and to apply the proceeds thereof to such corporate purposes as the board might from time to time determine. In response to such letter of November 11, 1931, and said notice of November 20, 1931, the proxies of stockholders were procured reading to Oscar R. Thorson, Emory H. English and J. H. Thompson, Emory H. English, and Oscar R. Thorson being the representatives of John A. Thompson, and these proxies were voted by Oscar R. Thorson in unison with the stock and proxies held by John A. Thompson, controlled and dominated the stockholders' meeting held on December 22, 1931, as a part of the scheme, plan and conspiracy. At this meeting Oscar R. Thorson voted by proxy 1011 shares and in person 18 shares and John A. Thompson by proxy 505 shares and in person 137 shares and Mrs. John A. Thompson in person 20 shares, M. White 18 shares. The shares thus voted by Thorson, John A. Thompson, M. K. Thompson and M. White being 1709 shares, which were more than a majority of the 2608 shares represented at the meeting. That

at said meeting there was adopted a resolution authorizing the issuance of first mortgage bonds in the aggregate principal sum of \$200,000., and the conveyance by mortgage deed of trust of all of the property of the Bridge Company to secure the payment of such bonds. The resolution relating to the bond issue was voted and carried by the votes of said John A. Thompson and his controlled associates Oscar R. Thorson, M. White and his wife M. K. Thompson. Such resolution was presented at said stockholders' meeting with false preambles and representations as reasons or excuse for the voting of the bond issue as follows:

[fol. 72] (a) "Whereas it was originally contemplated that the funds necessary to construct the Blackhawk Bridge would be acquired through the sale of stock and whereas a substantial part of the funds were acquired in that manner, but due to a change in general economic conditions it developed that it was impossible to realize sufficient funds from that source as rapidly as the same were required to complete the bridge project economically.

(b) "Whereas, it was necessary for the company to borrow funds to expedite the completion of said bridge and avoid disaster and whereas the amount of steel required and cost of building the bridge was greatly in excess of the cash originally estimated.

(c) "Whereas, there now remains unsold capital stock of the company in the approximate amount of \$120,000.

(d) "Whereas, it now becomes necessary for the company to raise sufficient funds with which to pay loans made to the company by the Phoenix Finance System, Inc., a greater portion of which is secured by mortgage on the property of the company and which is now past due.

(e) "Whereas, the company for these and other corporate purposes will be presently required to borrow not to exceed \$100,000. to discharge these obligations and others which it is contemplated will presently arise.

(f) "Whereas, it is anticipated that additional funds, not to exceed \$100,000. may from time to time be required to discharge present or future obligations of the company



to provide for the payment of pavement and improvement of dike and to care for flood conditions and other emergencies.

(g) "Whereas, the company finds itself unable to acquire funds for these purposes except through the creation and issuance of bonds secured by mortgage deed of trust covering the assets, property and income of the property, and whereas the interests of the stockholders would be [fol. 73] jeopardized unless such funds or a part thereof are made available within a reasonable time."

That the aforesaid preamble, statements and representations were misleading, false and fraudulent and made with intent to deceive and defraud the Bridge Company and its stockholders. That said meeting was wholly controlled and dominated by John A. Thompson and his associates, officers and directors of the Phoenix Finance System, Inc. That intervener Fayette D. Kendrick, and other stockholders, relying on the aforesaid false and fraudulent statements contained in said letters and notice and believing the same to be true and knowing not to the contrary sent a proxy in the form aforesaid. That independent stockholders at said meeting relying on the aforesaid representations and believing the same to be true and not knowing the contrary voted for such resolutions, and independent and uncontrolled stockholders who voted for such resolutions did so on account of being deceived by the aforesaid false representations.

38. That following such special meeting, a directors' meeting was held, dominated and controlled by John A. Thompson, at which meeting a purported resolution was passed with respect to the \$50,000. mortgage, and with reference to the issuance of the bonds therefor; that at said meeting it was represented and claimed by John A. Thompson that it was a valid and bona fide mortgage, and that said John A. Thompson did not disclose the fact that the alleged mortgage was not based on a proper consideration, and that the same was fraudulent; and that such independent directors as were present, voting for such resolution on the said representations of said John A. Thompson, believed the same to be true, knowing nothing to the contrary and were deceived thereby.



39. On January 5, 1932, a directors' meeting of the Bridge Company was held at which there were present four Thompson controlled directors, Emory H. English, Oscar R. Thorson, A. B. Wilder and M. White and no others, at which meeting these four Thompson-Phoenix [fol. 74] Finance System, Inc., directors passed a resolution to purchase from the Phoenix Finance System, Inc., 517 shares of Class A preferred stock for \$51,700., with interest at the rate of 6% from January 1, 1931, and to deliver Class B bonds of the Bridge Company in such face amount as would on the basis of 8% yield \$51,700. with interest thereon which amounted to \$60,500. of bonds. That neither on the 5th day of January, 1932, nor at any time thereafter did the Iowa-Wisconsin Bridge Company have any surplus with which to make a repurchase of its own stock.

That while the Articles of Incorporation of the Bridge Company contain the provisions set forth in paragraph seven of the interveners' petition of intervention, and paragraph eleven of these findings of fact, the Bridge Company, through the influence of the said Thompson and his associates caused \$60,500. of said bonds to be issued to the said Thompson or his owned and controlled institutions. When that was done, there was outstanding other Class A stock held by other stockholders who were not given the permission or opportunity by the Bridge Company, as was the said Thompson and his affiliated companies, to surrender such Class A stock and receive bonds, as did the said Thompson and his institutions. That no notice of intention of the corporation to redeem said Class A shares was mailed or given to holders of such stock, as required by said paragraph seven of the Articles of Incorporation, except to the said Thompson and his controlled companies. That in other words, all of the said Class A stock was not purchased by the Bridge Company at said time through the issuance of the said bonds or otherwise; nor was a portion of the said Class A stock redeemed proportionately, as provided by the Articles of Incorporation set forth in paragraph seven of the petition of intervention and paragraph 11 of these findings. And at said time the said Class A stock was thus surrendered by the said Thompson without notice to other stockholders similarly situated, and that

[fol. 75] such transaction took place without a legal authorizing vote, on the part of the stockholders or directors of the Bridge Company. That so far as Thompson and his associates were concerned, they were voting under the influence of Thompson, but so far as independent stockholders and directors were concerned, they did not know the true facts when they voted for the pretended authorizing resolution.

That during all the times material there was in effect in the State of Delaware a statute, as set forth in paragraph eight of the petition of intervention and paragraph 12 of these findings. That when the said Thompson and his companies exchanged the said Class A stock for the said bonds in the amount of approximately \$60,500., such action caused an impairment of the capital of the corporation in violation of said Delaware statute.

That the action of the said Thompson, in promoting said exchange of Class A stock for bonds, was fraudulent and for the purpose of conferring on himself a preference over other holders of Class A stock. That by thus conspiring and acting fraudulently the said Thompson did acquire a preference over other holders of such Class A stock.

40. That on March 7, 1932, a meeting of the board of directors of the Bridge Company was held at which were present Emory H. English, John A. Thompson, M. K. Thompson, Oscar R. Thorson, H. T. Wagner and A. B. Wilder, all Thompson and Phoenix Finance System, Inc., controlled directors, at which a purported resolution was adopted for the delivery of \$97,000. of Class A bonds of the Bridge Company to the Phoenix Finance System, Inc., for the purported \$50,000. mortgage and interest thereon and for \$10,000. to the Industrial Contracting Company, \$9,000 to Kramer & Hogg and \$11,262.71 to McClintic-Marshall Company, with interest on such items amounting to \$83,811.29 and with discount on the bonds of \$12,727.31, making a purported total of \$96,538.58 and a purported balance of \$461.42 being charged to Phoenix Finance System, Inc., on the books of the Bridge Company, making a total of \$97,000.

The aforesaid \$10,000. to the Industrial Contracting Company was neither due from nor paid by the Bridge

Company as aforesaid and the Bridge Company did not owe the \$11,262.71 to McClintic-Marshall Company. That said two items were items that had been fully covered and disposed of by the Bridge Company in its settlement with John W. Shaffer & Company and were items which Thompson & Company, subsidiary of Phoenix Finance System, Inc., had undertaken to pay. That as a part of the scheme, plan and conspiracy leading up to the issuance of said bonds here involved, the said Thompson paid the balance of \$11,262.71 to McClintic-Marshall Company and as a form and pretense the said John A. Thompson, dominating and controlling the Bridge Company in its acts, in making payment thereof for the Phoenix Finance System, Inc., as aforesaid, attempted to carry out such transaction as though he was making payment thereof for the Bridge Company and caused false entries to be made on the books of the Bridge Company as though said approximate amount had been advanced by the Phoenix Finance System, Inc., to the Bridge Company and the item paid by the Bridge Company, when in fact the Bridge Company did not owe said item.

The Court further finds:

41. That the Phoenix Finance Corporation, at the time it was organized, was officered and controlled by the same officers as Phoenix Finance System, Inc., and took over the succession both of assets and liabilities, with full notice of the facts and circumstances surrounding the bond issue in controversy in this case, and assumed the entire fruits and activities of its predecessor, so far as concerns this case, and proceeded to carry on with the same notice and purpose, adopting all of the plans and results of its predecessor.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court December 1, 1936.

[fol. 77]

Exhibit "C".

## Final Decree.

United States District Court, Northern District of Iowa,  
Eastern Division.

First Trust & Savings Bank, formerly named Bechtel Trust  
Company, and A. H. Schubert, Trustees, Plain-  
tiffs,

No. 220. vs. In Equity.

Iowa-Wisconsin Bridge Company, Defendant,

Fayette D. Kendrick, et al., Interveners.

The above entitled cause came before the Court on the first day of December, 1936, it being the first day of the December, 1936 Term of this Court, for the filing of Opinion, ruling upon exceptions to the Master's Report, taking final submission of the cause upon the Master's Report and his advisory findings and the evidence in the cause, and the entry of a Final Decree.

On the 5th day of December, 1934, the cause being at issue and upon the trial docket, was referred to the Hon. James W. Kindig, as Master in Chancery to take the evidence in the cause and report findings of fact and conclusions of law. On the 10th day of March, 1936, the Master having taken all of the evidence in the cause, filed his report embodying his findings and conclusions, and thereafter exceptions were filed to said report by the First Trust & Savings Bank formerly named Bechtel Trust Company, and A. H. Schubert, Trustees, and Phoenix Finance Corporation, plaintiffs, and by defendant and interveners. And on the 13th day of June, 1936, all respective parties appearing by their counsel and by agreement of all parties all exceptions to the Master's Report were argued and submitted at the United States Court Room at Fort Dodge, in [fol. 78] the Central Division of this District. And thereafter the Court received briefs from all counsel, examined and considered the Master's Report and also all evidence taken before the Master. And the Court now being fully advised in the premises, makes and enters the following rulings:

The exceptions of the plaintiffs, trustees, numbered one to eight inclusive, and of Phoenix Finance Corporation, numbered one to six inclusive, are overruled and exceptions are reserved to the respective plaintiffs. Defendant and interveners' exceptions numbered one, two, five and ten having been withdrawn, are not further noticed. Defendant and interveners' exceptions numbered three, four, six and seven are overruled, and exceptions reserved to the defendants and interveners. And defendant and interveners' exceptions numbered eight, nine and eleven are sustained, with exceptions reserved to all opposing parties.

The Court having ruled upon all exceptions, and allowed exceptions to all rulings, now takes final submission of the cause upon the Master's advisory report, findings and conclusions, and upon all evidence taken before the Master and upon depositions filed in the cause and introduced before and considered by the Master.

And the Court now being fully advised in the premises, it is Ordered, Adjudged and Decreed that the findings and conclusions of the Master, except as modified and amplified by additional findings, be adjudged as the findings and conclusions of the Court, with such additional findings and conclusions as are filed in the cause. That the mortgage and bonds in suit were fraudulently issued. That all bonds are without valid consideration, with the exception of the bonds aggregating \$15,000., hereinafter specified. [fol. 79] That the bill of the plaintiffs be dismissed as to the plaintiff, Phoenix Finance Corporation, and that the prayer of the bill be denied, except in so far as the Decree provides for the protection of the holders of said \$15,000. in bonds. That foreclosure and sale of the mortgaged property be denied, but that in lieu thereof all earnings and revenues of the Iowa-Wisconsin Bridge Company over and above such as may be absolutely necessary to pay maintenance, operating expenses and taxes, be sequestered and impounded for the purpose of paying the following bonds with interest, to-wit, \$4,000. in bonds, due Bradshaw, Schenk and Fowler, \$6,000. in bonds, due Helmer N. Anderson, and \$1,000. in bonds, due each of the following, Laura B. Baker, J. W. Dempsey, Lyle Sign Company, M. B. Stone, and Cobb, Hoke, Benson, Krause and Faegre, or

their respective assigns. That the property be retained under receivership until these obligations, with interest, are fully paid either out of the revenues sequestered as aforesaid, or by other funds found and furnished by the Bridge Company.

Jurisdiction is hereby reserved to deal with all matters arising under the receivership and in connection with adjustment and payment of taxes and counsel fees.

It is further Ordered, Adjudged and Decreed that the entire costs in the case be taxed to the plaintiffs, First Trust & Savings Bank, formerly named Bechtel Trust Company, and A. H. Schubert, Trustees, and Phoenix Finance Corporation. To all of which the plaintiffs have duly excepted.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court December 1, 1936.

[fol. 80]

Exhibit "D".

Memorandum Opinion on Petitions for Rehearing and for Modification of Decree.

United States District Court, Northern District of Iowa,  
Eastern Division.

First Trust & Savings Bank, formerly named Bechtel Trust Company, and A. H. Schubert, Trustees,  
Plaintiffs,

No. 220. vs. In Equity.

Iowa-Wisconsin Bridge Company, Defendant,

Fayette D. Kendrick, et al., Interveners.

After several years struggle by the parties, the above cause came on for final decree on the first of December, 1936, and on that date the Court filed its opinion, its findings of fact and conclusions of law, and entered its final decree. On December 19th, 1936, Phoenix Finance Corporation filed a motion to vacate the decree and dismiss the cause upon the ground that the Court had lost jurisdiction of the cause when it permitted the Phoenix Finance Corporation to be made a party co-plaintiff with the trustees un-



der the mortgage. The theory was that jurisdiction had rested on diversity of citizenship, and the making of Phoenix Finance Corporation a Delaware corporation, co-plaintiff, destroyed diversity of citizenship inasmuch as the Iowa-Wisconsin Bridge Company was also a Delaware corporation. For reasons stated in the supplemental opinion filed January 5th, 1937, the motion to vacate the decree and dismiss the cause was overruled. On January 29th, 1937, Phoenix Finance Corporation filed its petition for rehearing and modification of decree, and on the same date the trustees filed their motion to vacate and dismiss, similar to that previously filed by Phoenix Finance Corporation, and also in the alternative adopted the petition for rehearing of Phoenix Finance Corporation. The interveners in behalf of the Bridge Company filed motions to strike and re-[fol. 81] sistances to the petitions for rehearing. On the 18th day of February, 1937, these motions and petitions were fully argued orally before the Court and briefs submitted, and all matters then before the Court submitted.

The Court has determined to entertain the petitions for rehearing and modification of decree, rather than to strike the same, and dispose of the same on their merits. Respecting the motions to vacate and dismiss for want of jurisdiction, that matter has been fully answered by the supplemental opinion of the Court filed on the submission of a like motion by Phoenix Finance Corporation, on January 5th, 1937. The petition for rehearing filed by Phoenix Finance Corporation and adopted by the plaintiff trustees, rests upon the claim that the Master to whom the cause was referred in its entirety, received the submission under a misapprehension, and that the plaintiffs had also been of impression that they were to take further testimony at some future time when they submitted their bonds to the Master or to the Court. They further contend that the cause in behalf of the trustees and the Phoenix Finance Corporation was mismanaged by their counsel, and that now having taken in new blood at the bar the present counsel should be given a chance to try the case over.

Having in mind the analogy of petitions for rehearing in equity causes and motions for new trial in law causes, the Court is unable to find any substantial merit in any of the claims for a rehearing. The defense interposed to the

plaintiffs' cause of action was that the bond issue and mortgage securing the same were all a part of a deliberate fraudulent scheme to obtain possession and ownership of the bridge after its completion and freeze out all of the stockholders. This scheme as alleged and as proven, dated back to the inception of a certain \$50,000 mortgage, and proceeded forward including the plans and their execution for the issuing of the bonds and the mortgaging of the bridge. During all of this time the Phoenix Finance System Incorporated, and its successor Phoenix Finance Corporation, and the Bridge Company had interlocking directorates. The so-called Thompson interests predominated in all of them. As the Master pointed out in his fourth conclusion of law, in the circumstances with the charge of fraud and conspiracy made, the burden was on the plaintiffs who had brought the suit at the instance of the Phoenix corporations, to show clean hands and fair dealing. This the plaintiffs not only failed to do, but throughout combated the interveners who were permitted to defend in behalf of the Bridge Company. The interveners obtained an Order of Court for the production of the books and records of the Phoenix Finance Corporation before the Master, but Phoenix Finance Corporation vigorously and successfully it appears prevented the production of those books and records, and its officer when on the stand before the Master, declared his inability to produce, for they had been sent to the State of Florida. It is now with poor grace that the plaintiffs invoke the discretion of the Court for a rehearing in order to use those very books and records. Anticipating an adverse ruling, the petitioners alternatively pray for a modification of the decree with provisions commanding the re-issuing of certain shares of stock to Phoenix Finance Corporation, which it canceled when fraudulently obtaining the bonds. One might conceive some invidious analogies to this situation. Having attempted the strong box of another, and being hoist by what is now claimed to be a premature explosion, they volubly invoke the compassion of the Court to restore valuable implements of their craft left behind. I see no reason why a court of equity should be deeply concerned in giving any affirmative relief to the Phoenix Finance Corporation. On the other hand, I think the petitions for re-

hearing should be denied and the motion to dismiss and vacate the decree overruled, and it will be so Ordered.

Dated, March 4th, 1937.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court March 4, 1937.

[fol. 83]

Exhibit "E".

(Opinion.)

"United States Circuit Court of Appeals  
Eighth Circuit.

May Term, A. D. 1938.

First Trust and Savings Bank and A. H. Schubert, as  
Trustees, and Phoenix Finance Corporation, Appel-  
lants,

No. 11,055. vs.

Iowa-Wisconsin Bridge Company, a Corporation, De-  
fendant, and Fayette D. Kendrick, Warren G. Hayes,  
Anna W. Schuster, T. H. Bakewell and Ernest W.  
Haverland, Interveners, Appellees.

Appeal from the District Court of the United States for  
the Northern District of Iowa.

(August 8, 1939.)

Mr. Vincent L. Boisaubin and Mr. Lon O. Hocker (Mr.  
Frank Y. Gladney and Messrs. Jones, Hocker, Gladney &  
Grand were with them on the brief) for Appellants.

Mr. William C. Green and Mr. F. A. Ontjes (Mr. Charles  
N. Dohs was with them on the brief) for Appellees.

Before Gardner, Woodrough and Thomas, Circuit  
Judges.

Thomas, Circuit Judge, delivered the opinion of the  
court.

This is an appeal in equity from a decree denying fore-  
closure of a Mortgage Trust deed. 19 F. Supp. 127.

2. First Trust and Savings Bank, et al., etc. vs. Iowa-Wisconsin Bridge Co., et al.

The trust deed, dated January 1, 1932, but actually executed February 20, 1932, was given to secure a bond issue of \$200,000. It conveyed to the complainant trustees all the property of the defendant including a bridge across the Mississippi river at Lansing, Iowa. The trustees named therein were the Bechtel Trust Company, now called First Trust and Savings Bank, an Iowa corporation, and A. H. Schubert, a citizen of Wisconsin. The grantor, Iowa-Wisconsin Bridge Company, is a Delaware corporation.

On August 28, 1933, the bill of foreclosure was filed in [fol. 84] the district court by the trustees, complainants, against the bridge company, defendant. The bill alleged jurisdiction based upon diversity of citizenship, the authority of the trustees to sue under the terms of the trust deed, default, and acceleration of the due date. The prayer was for foreclosure and sale and the appointment of a receiver. The defendant bridge company filed answer September 25, 1933, admitting the jurisdiction of the court, the execution of the trust deed and the issuance of the bonds; denying complainant's right to the appointment of a receiver; alleging that a part or all of the bonds secured by the trust deed were invalid; and praying the protection of the court. On September 26, 1933, the court appointed a receiver of all of the property of the bridge company with direction to take immediate possession and to operate its business.

On December 5, 1933, by leave of court, Fayette D. Kendrick, a stockholder of the bridge company and citizen of Minnesota, intervened on behalf of defendant, praying that the complainants' bill be dismissed, the bonds cancelled and the deed of trust set aside. He alleged that the bridge company was and had been since 1930 dominated by one J. A. Thompson and his associates; that by the exercise of such domination these men had fraudulently procured the execution and delivery of the trust deed and the issuance of the bonds to themselves or to corporations controlled by them. Kendrick then moved that certain corporations alleged to be controlled by Thompson including Phoenix Finance System, Inc., and Phoenix Finance Corporation,

Delaware corporations, be made parties. This motion was granted. Thereafter Phoenix Finance Corporation appeared and filed answer to the petition of intervention. Inasmuch as the district court found that Phoenix Finance Corporation was in all respects so far as concerns this case the successor of Phoenix Finance System, Inc., and was managed by the same officers, both corporations are hereinafter indiscriminately referred to as Phoenix. The answer of Phoenix denied the charges of fraud and alleged that the corporation was the owner of a large amount of the bonds. Other stockholders of the bridge company, [fol. 85] residents of Iowa, intervened and adopted the pleadings filed by Kendrick. By order of court, the petition of intervention was considered as an answer to the bill of foreclosure.

On December 5, 1934, counsel for the parties agreeing, the court appointed a special master to hear all the issues and to report his findings of fact and conclusions of law. The master, after taking evidence, filed a comprehensive report on March 18, 1936, to which all parties excepted. After a hearing on the exceptions the court adopted the findings of the master, with slight modifications hereafter noted, and amplified them with additional findings. On December 1, 1936, the court entered its decree "That the mortgage and bonds in suit were fraudulently issued. That all bonds are without valid consideration; with the exception of the bonds aggregating \$15,000," which were specified. Foreclosure was denied, but the receivership was continued for the purpose of impounding the income of the bridge company until the \$15,000 of obligations found to be meritorious should be paid. On December 19, 1936, Phoenix moved the court to vacate all orders entered in the cause and to dismiss the cause without prejudice on the ground that "no diversity of citizenship exists upon which the jurisdiction in this suit is based." A similar motion was filed by the trustees. Both motions were overruled. Thereafter complainants filed a petition for rehearing, or in the alternative to modify the decree. The petition was overruled.

On this appeal two classes of error are assigned: (1) That the district court was without jurisdiction because



diversity of citizenship did not exist; and (2) errors occurring in the proceedings in the lower court. The attack on the jurisdiction will be first considered.

With respect to the jurisdiction of the district court, it must be conceded that prior to the joining of Phoenix as a party there was complete diversity of citizenship. It is appellants' contention that Phoenix is a proper, necessary, and indispensable party, and that after it was joined as a plaintiff diversity of citizenship no longer existed because both Phoenix and the defendant bridge company are citizens of Delaware. Appellees say that Phoenix is only a [fol. 86] formal and not an indispensable party, and that therefore its citizenship is not material to the question of jurisdiction.

It is settled that jurisdiction of the federal court can not be defeated by the joinder of an unnecessary party, *Cella vs. Brown*, 8 Cir. 144 F. 742, cer. den. 202 U. S. 620; *Egyptian Novaculite Co. vs. Stevenson*, 8 Cit., 8 F. (2d), 576, 579; and the bringing in of an unnecessary party after the commencement of the suit will not oust the jurisdiction. *Sioux City Terminal Railroad & Warehouse Co. vs. Trust Co. of North America*, 8 Cit., 82 F. 124, aff. 173 U. S. 99; *Weiland vs. Pioneer Irrigation Co.*, 8 Cit. 238 F. 519, aff. 259 U. S. 498; *Phelps vs. Oaks*, 117 U. S. 236, 240.

The question here presented, in its simple form, is whether under the facts of this case a bondholder is a necessary and indispensable party in a suit brought by the trustees to foreclose the trust deed where the defense is the invalidity of the trust deed and the bonds because of fraud in their inception.

Looking to the language of the trust deed alone it is apparent that the trustees are the only necessary and indispensable parties plaintiff. The trust deed made it the duty of the bridge company to pay taxes on the mortgaged property, to pay interest on the bonds, and to pay the bonds as they matured. In case of default for a period of sixty days it was provided that the trustees may, and upon the written request of the holders of 25 per cent of the bonds then in default, shall declare the principal of all the bonds due, and "shall proceed to protect and enforce their rights



and the rights of the bondholders under this Indenture by a suit or suits in equity, or at law, \* \* \* by \* \* \* foreclosure hereunder, or for the enforcement by any other appropriate, legal or equitable remedy, as the Trustees \* \* \* shall deem most effectual."

It is further provided in the trust deed that "No holder of any bond or coupon secured hereby shall have any right to institute any suit, action or proceeding in equity or law, for the foreclosure of this Indenture," except in case the trustees after notice and demand refuse to act.

The suit was commenced by the trustees at the request of Phoenix, holder of more than 25 per cent of the bonds, and was prosecuted by attorneys selected by it.

[fol. 87] One of the questions raised in connection with the matter of jurisdiction relates to the applicable law. It is settled that federal courts of equity look to the law of the state for the ascertainment of rights of a substantive character; but in questions of remedy the equity jurisdiction of the national courts under the Constitution and laws is uniform throught the United States and can not be limited in its extent or controlled in its exercise by the laws of the states. *Watts v. Camors*, 115 U. S. 353; *Carolina Power & Light Co. vs. South Carolina Public Service Authority*, 4 Cir., 94 F. (2d) 520, 525; *Mathis vs. Hemingway*, 8 Cir., 24 F. (2d), 951. Cf. *A. & R. Realty Co. vs. Northwestern Mut. Life Ins. Co.*, 8 Cir. 95 F. (2d) 703, 707; *Henrietta Mills vs. Rutherford County*, 281 U. S. 121, 127. The Conformity Act of 1872 (28 U. S. C. A. 724) by its terms is not applicable to equity causes.

In so far as the right here involved is substantive it is controlled by the laws of Iowa and Wisconsin, in which states the property is situated. Section 10968 of the Code of Iowa of 1935 provides: "A trustee of an express trust, a party with whom or in whose name a contract is made for the benefit of another, or party expressly authorized by statute, may sue in his own name, without joining with him the party for whose benefit the action is prosecuted." In the case of *Tucker vs. Silver*, 9 Iowa 261, 262, the Supreme Court of Iowa said: "The general rule, independent of the Code, is, that a trustee is a necessary party;" and it

was held that the provisions of the code do not change the rule. See also *Bennett Savings Bank vs. Smith*, 171 Iowa 405, 408; *In re Receivership of Selway Steel Post & Fence Co.*, 198 Iowa 950, 957-8; *Fransham vs. Tow Bros.*, 196 Iowa 1082, 196 N. W. 71. The Wisconsin rule is the same. *Hayes vs. Lewis*, 21 Wis. 663; *Milwaukee Trust Co. vs. Van Valkenburgh* (Wis.), 112 N. W. 1083.

If the right in question be regarded as remedial only the federal rule effects the same result and is equally clear. Equity rule 37 provides that, "Every action shall be prosecuted in the name of the real party in interest, but an executor \* \* \* trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another \* \* \* may sue in his own name without joining with him the party for whose benefit the action is brought."

[fol. 88] Under this rule it has been held that unless the trustee of an express trust refuses to act or is otherwise disqualified such trustee is an indispensable party and the joinder of a beneficiary will not defeat jurisdiction. *Coal Co. vs. Blatchford*, 11 Wall. 172, 175; *Knapp vs. Railroad Co.*, 20 Wall. 117, 123; *Dodge vs. Tulleys*, 144 U. S. 451, 456; *Bullard vs. Cisco*, 290 U. S. 179, 190; *Hamer vs. New York Railways Co.*, 244 U. S. 266; *Richter vs. Herome*, 123 U. S. 233; *Kerrison vs. Stewart*, 93 U. S. 155; *Mexican Central Railway Co. vs. Eckerman*, 187 U. S. 429; *Allen-West Commission Co. vs. Brashear*, 176 F. 119, 121; *Smith vs. Bell*, 8 Cir., 217 F. 243, 244.

The Supreme Court said in *Dodge vs. Tulleys*, *supra*, where there was but one beneficiary: "Whether one (beneficiary) or many, the trustee represents them all, and in his name the litigation is generally and properly carried on. The fact that the beneficiary in a trust deed may be a citizen of the same state as the grantor, would not, if the trustee is a citizen of a different state, defeat the jurisdiction of the federal court."

Furthermore, it is plain that the district court acquired complete jurisdiction over the mortgaged property when the suit was commenced and the receiver took possession. *Palmer vs. Texas*, 212 U. S. 118; *Marcell vs. Engebretson*, 8 Cir., 74 F. (2d) 93. At that time, before Phoenix became

a party, there was complete diversity of citizenship. Had Phoenix not become a party the court could have proceeded to final judgment, granting or denying foreclosure. It could have decided every issue, including the validity of the trust deed and the amount of the debt secured thereby; and the decree would have been binding upon the bondholders without their presence as parties to the record. *Shaw vs. Little Rock and Ft. Smith Ry Co.*, 100 U. S. 605; *Elwell vs. Fosdick*, 134 U. S. 500; *Kerrison vs. Stewart*, 93 U. S. 155; *Ritcher vs. Jerome*, 123 U. S. 233.

Appellants contend that the proceeding below was a consolidation of two separate and distinct suits, one brought by the trustees to foreclose the trust deed and one brought by the bridge company and interveners to cancel the bonds held by Phoenix: and that the jurisdiction as to each [fol. 89] controversy must be determined separately. This contention is without merit. The object of the interveners was to have the trust deed and the bond issue as an entirety decreed to be void as a complete defense. The lower court acted upon that theory. It is true, as appellants point out, the appellees made no specific allegations of fraud on the part of the minority bondholders. But the petition of intervention did allege that the execution of the trust deed and the issuance of bonds were a part of a fraudulent scheme on the part of Thompson and his associates, and that none of the bonds had passed to bona fide purchasers. It was the duty of the court before decreeing foreclosure to pass upon the validity of the deed of trust. *Speers Sand & Clay Works vs. American Trust Co.*, 4 Cir., 20 F. (2d) 333, 336. Further, if the controversy between the two Delaware corporations should in any way be considered as a separate controversy involving only the validity of certain of the bonds, then it was ancillary to the foreclosure proceeding, and jurisdiction attached irrespective of citizenship, because the subject matter had been drawn into the federal court under the receivership before Phoenix became a party. *Morgan's Co. vs. Texas Central Ry.*, 137 U. S. 171, 201; *Krippendorf vs. Hyde*, 110 U. S. 276. The court did not err in overruling appellants' attack on the jurisdiction.

The combined specifications of error of the various appellants assailing the proceedings in the district court present the following contentions;

1. In the transactions leading to the execution and delivery of the trust deed and the issuance of the bonds there was no fraud, no domination or control or overreaching of the bridge company by Thompson and his associates. Even if there were fraud the trust deed and bonds were valid.

2. The bridge company received full consideration for the bonds.

3. The decree is erroneous because it denied foreclosure and sale for the benefit of those holders of bonds who were meritorious creditors of the bridge company to the extent of \$15,000.

4. The decree is broader than the issues.

5. Phoenix Finance Corporation is entitled for foreclosure for the bonds held by it.

[fol. 90] 6. The court erroneously denied the petition for rehearing.

7. The court erred in refusing to modify the decree and to compel the defendant bridge company to restore to Phoenix 517 shares of bridge company stock given in exchange for bonds.

The first two of these contentions involve findings of fact rather than questions of law. The appellants insist that the evidence does not sustain the findings of the master and of the district court upon these issues. Their findings are presumptively correct, and a very heavy burden rests upon the party who attacks them on appeal. *Davis vs. Schwarts*, 155 U. S. 631, 636; *Schock vs. Malloy*, 8 Cir., 26 F. (2d) 621, 623; *Tyronza Special School Dist. vs. Speer*, 8 Cir., 94 F. (2d) 825.

To bring into view the grounds on which it is claimed the court erred in the particulars alleged calls for a brief survey of the history of the bridge company, of the facts in evidence and of the findings and conclusions of the court.

The court found that the evidence discloses that about March 20, 1928, the Lansing Bridge Company was organized under the laws of Delaware to construct and operate a bridge across the Mississippi river from Lansing, Iowa, eastward to the Wisconsin shore. In June the name of the

company was changed to Iowa-Wisconsin Bridge Company. The corporation was authorized to issue no par common stock and preferred stock with a par value of \$100 a share, the respective amounts of which were changed from time to time by amendment of the articles of incorporation. The articles provided that if less than all the shares of the preferred stock were redeemed the selection of shares to be redeemed must be made by lot or pro rata, and that 30 days written notice of intention to redeem must be mailed to holders of stock to be redeemed. And the statutes of Delaware provided that no corporation should use its funds or property to purchase its own stock, when such use would impair the capital of the corporation.

The bridge was originally promoted in 1929 by residents of Lansing, Iowa. They employed Vernon W. O'Connor and John W. Shaffer of Minneapolis, Minnesota, as promoters of the bridge company. As such promoters O'Connor and Shaffer acted through the medium of the [fol. 91] Standard Shares Holding Company and John W. Shaffer & Company. Shaffer owned all of the stock of both these corporations, except qualifying shares of other directors. On October 26, 1929, a contract was made between the bridge company and Standard by the terms of which Standard was designated as trustee of the bridge company. This contract authorized the trustee to construct and operate the bridge "either directly or by other persons or corporations with whom it shall contract \* \* \*" at a cost not to exceed \$600,000. The bridge was to be completed by October 1, 1930. On November 12, 1929, the power and authority of Standard was further increased by a resolution of the board of directors of the bridge company by the terms of which Standard was appointed "reorganization manager, agents and trustees for the Company." Standard was authorized to enter into contracts for completing the bridge, was given 4000 shares of the bridge company stock for its services, and was vested with the "management of the fiscal affairs of the Company." Shaffer thus acquired complete control of the bridge company through the medium of his Standard Shares Holding Company and its ownership of bridge company stock. Contracts were promptly made for building the bridge.



On November 9, 1929, the bridge company entered into a contract with Shaffer employing him as engineer to make plans for and to supervise the construction of the bridge. For his compensation he was to receive "10 per cent of the total cost of the construction of said bridge, causeways and approaches." On April 4, 1930, this contract was assigned by Shaffer to John W. Shaffer & Co.

Likewise on December 9, 1929, acting as trustee and agent for the bridge company, Standard, by Shaffer as president, entered into a contract with O'Connor for the erection of the substructure of the bridge at a cost of \$193,196.80 with a provision for extras on the basis of cost plus 15 per cent. [fol. 92] This contract was also assigned by O'Connor to John W. Shaffer & Co. on April 4, 1930. He had previously sublet the contract to Industrial Contracting Company on such terms that the final cost to his assignee was \$97,976.36.

On April 1, 1930, O'Connor was elected president of the bridge company, and Shaffer, who had been secretary of the bridge company, resigned, and his personal secretary was elected to fill the office. At that time Standard held 4000 out of the 4641 outstanding shares of bridge company stock.

By October, 1930, the grading and substructure were nearly completed. No contract had been let for the erection of the superstructure. The work had been financed through the sale of bridge company stock. The sale of stock had slowed up, and Shaffer and Standard, the trustee, were confronted with the necessity of working out a plan to finance the completion of the bridge through the sale of more stock.

It was at this point that Shaffer entered into negotiations with John A. Thompson of Des Moines, Iowa, a promoter and financier, who had an office with Shaffer and his corporations and business interests in Minneapolis. Thompson carried on his financial and other business operations largely by means of a group of owned, controlled and affiliated corporations. Only three of these corporations are of interest here. They are Thompson & Company, Phoenix Finance System, Inc., and its successor in interest Phoenix Finance Corporation.



The master and the court found that Shaffer and Thompson entered into an "agreement" in reference to handling the affairs of the bridge company in October or November, 1930. It is clear from what followed that an understanding of some sort was arrived at between them designed to complete the financing and construction of the bridge, and, as the appellees claim, to exploit the purchases of stock and fraudulently to take the bridge from the defendant company. On November 1, 1930, Thompson was made president of the bridge company, and, if he had not learned before that date, he was soon made familiar with its history, with its financial condition, and with Shaffer's manipulation of its affairs.

[fol. 93] For the accomplishment of their purpose a series of contracts were entered into all relating to the same end. While these contracts bear different dates, which in some instances appear confusing, their subject matter and the relation of the parties bear evidence that they were all in contemplation by their designers at the same time.

On November 11, 1930, a contract was executed between John W. Shaffer & Company, by Shaffer, its president, and Iowa-Wisconsin Bridge Company, by J. A. Thompson its president, by the terms of which John W. Shaffer & Co. agreed to furnish the material and complete the superstructure of the bridge company, for \$10,000. cash and 3200 shares of the capital stock of the bridge company, with a provision for extras. The work was to proceed with sufficient dispatch that the bridge would be open for traffic by March 10, 1931. The contractor agreed to furnish a surety bond at the expense of the owner. Subsequently Thompson waived the giving of the surety bond.

Evidently in anticipation of the making of the foregoing contract, John W. Shaffer & Co. entered into a contract on November 8, 1930, with McClintic-Marshall Company for the purchase of the steel for use in the construction; and on November 11, 1930, Shaffer & Co. sublet the contract for the erection of the steel superstructure to Industrial Contracting Co. on a unit price basis with a guaranteed maximum cost of \$141,734. Both contracts provided for punctual payments on work done at short intervals.

Another of this series of contracts is dated November 10, 1930, the parties to which were Phoenix, by J. S. Thompson, president; John W. Shaffer & Co., by Shaffer, president; and the bridge company, by O'Connor, chairman of the board. This contract provided (1) that in consideration of 140 shares of bridge company stock Phoenix guaranteed the cash payments to be made by John W. Shaffer & Co. to McClintic-Marshall Co. and to Industrial Contracting Co. under their subcontracts for steel and the erection of the superstructure; (2) Shaffer & Co. agreed to make the guaranteed payments promptly; (3) the bridge company agreed that in the event Phoenix was required to make any payments under its guaranty for Shaffer & Co. the bridge company would on demand pay Phoenix an equal sum with interest at 8% after March 1, 1931; (4) Shaffer & Co. further agreed to furnish a standard completion bond guaranteeing completion of the bridge. The contract further [fol. 94] provided (5) that in case of default in any payment to Phoenix it should have the right to take possession and control of the bridge. The 140 shares of stock were actually issued to Phoenix on November 1 and disposed of by the latter prior to November 9.

About the time the foregoing contracts were made, the exact date not appearing in the record, John W. Shaffer & Co. sold to Thompson & Co. the 3200 shares of the bridge company stock issued under the superstructure contract of November 11, 1930, at a price of 70 and took in payment Thompson & Company's note for \$224,000. The deal was made with J. A. Thompson acting for Thompson & Company. The note was fully paid in installments.

On November 26, 1930, a "Stated Settlement Agreement" was executed between Standard and the bridge company. This settlement terminated the trust agreement of October 26, 1929. Standard accounted for 3509½ shares of stock sold by it at \$100 per share, returned assets which were ultimately liquidated for about \$80,000, and turned back the bridge company stock held by it, except 1500 shares which were later surrendered in consideration of a contract to manage the bridge after completion.

During the following winter, for the purpose of expediting the sale of stock, Thompson sought the aid of the El-

liott-Rodgerson Company of Minneapolis. Thompson assured the officers of that company that \$750,000 would be the entire capitalization of the bridge, that no mortgage would be placed upon it and no bonds would be issued. Relying upon these representations, which were passed on to the public, Elliott-Rodgerson Company sold to the public about \$100,000 worth of bridge company stock at \$100 per share.

On March 10, 1931, a directors meeting, attended by four directors, was informed by Thompson that the funds from the sale of stock were not adequate to finance the rapid completion of the bridge. The directors thereupon authorized and the officers executed a mortgage upon all of the company's assets to Phoenix to secure a loan of \$50,000. Checks for \$35,000 and \$15,000 were drawn by Phoenix, endorsed by the bridge company, and returned to Phoenix.

The bridge was completed and opened on June 17, 1931.

On October 23, 1931, at a meeting of the board of directors of the bridge company Oscar Thorson, who was then secretary of the company and one of the directors elected at Thompson's request, stated that another \$40,000 was needed to pay off pressing creditors, who were not named. Consideration of this matter was postponed until the meeting of November 10, 1931, when the directors authorized the \$200,000 bond issue which is the subject of this suit. On December 22, 1931, a meeting of stockholders approved the bond issue.

The consideration claimed by appellants to have been paid by the parties to whom the bonds were issued may be summarized as follows:

To Phoenix in consideration of

1. In exchange for its mortgage dated March 10, 1931.		
Principal of mortgage .....	\$50,000.00	
Accrued interest .....	3,548.56	
Allowance to give 8% yield on bonds..	12,727.31	
	<hr/>	\$66,275.87
2. For advancements under guaranty contract of November 10, 1930.		
To Industrial Contracting Co. ....	10,000.00	
To McClintic-Marshall Co. ....	11,262.71	
	<hr/>	21,262.71

3. Paid Kramer & Hogg to discharge mechanic's lien .....	9,000 00	
4. Cash .....	461.42	
5. In exchange for 517 shares of bridge company stock with accrued interest .....	60,500 00	
6. As security for		
Payment of taxes .....	\$ 3,125 00	
Advancements .....	14,610.19	
	<hr/>	
	\$ 17,735 19	20,100 00
To attorneys as security for fee of .....	4,000 00	10,000 00
To Anderson for claim of .....	6,000 00	7,400 00
To five claimants for .....	5,000 00	5,000 00
	<hr/>	
	\$ 15,000.00	
		<hr/>
		\$200,000 00

[fol. 96] It will be observed that of the total issue \$22,400 of bonds were issued as security or in payment of claims against the bridge company by claimants other than Phoenix for obligations aggregating \$15,000, and the remainder of the bonds in the sum of \$177,600 were issued to Phoenix. The court and the master both found that the \$15,000 of claims were meritorious, and the decree provided for their payment by the receiver.

The important issue in the case is the question of the sufficiency of the consideration for the \$177,600 of bonds issued to Phoenix. The court found that Thompson deliberately planned to defraud the bridge company. We shall pass by several findings of the court supporting in some measure this conclusion and direct our inquiry more particularly to the bond issue. It is not disputed that Thompson during the period under review was president of the bridge company and also of Phoenix, and that others of his associates were members of the board of directors or held other offices in both corporations.

The rule for the guidance of the court in passing upon all these transactions was stated by the Supreme Court in *Geddes vs. Anaconda Mining Co.*, 254 U. S. 590, 599, as follows:

"The relation of directors to corporation is of such a fiduciary nature that transactions between boards having common members are regarded as jealously by the law as

are personal dealings between a director and his corporation, and where the fairness of such transactions is challenged the burden is upon those who would maintain them to show their entire fairness and where a sale is involved the full adequacy of the consideration. Especially is this true where a common director is dominating in influence or in character. This court has been consistently emphatic in the application of this rule, which, it has declared, is founded in soundest morality, and we now add in the soundest business policy. *Twin-Lick Oil Co. vs. Marbury*, 91 U. S. 587, 588; *Thomas vs. Brownville, Fy. Kearney & Pacific R. R. Co.*, 109 U. S. 522; *Wardell vs. Railroad Co.*, 163 U. S. 651, 658; *Corsicana National Bank vs. Johnson*, 251 U. S. 68, 90."

[fol. 97] Compare *McCandless vs. Furlaud*, 296 U. S. 140, 158.

We turn to the record. The bonds issued to Phoenix were authorized by two resolutions of the board of directors of the bridge company. The first resolution was adopted March 7, 1932, and authorized the bonds included in the first five items of the foregoing summary aggregating \$157,500. The second resolution was adopted July 7, 1933, and authorized the sixth item on the summary. The directors present at both meetings included Thompson and persons selected as directors by him. Other members of the board were absent.

The first item on the summary in exchange for which bonds were authorized was the \$50,000 mortgage dated March 10, 1931, including interest and discount on the bonds to make them yield the equivalent of 8%. The master and the court found that this mortgage was procured by fraud and was without consideration. The evidence supports the finding. The alleged consideration was two checks of \$35,000 and \$15,000 each given by Phoenix to the bridge company under date of March 11, 1931. While entries were made on the books indicating that the bridge company received and paid out \$50,000 on March 10, the circumstances justify the court's finding that the company received no benefit from the transaction. The checks both passed by a series of endorsements back into the bank account upon which they were drawn. Thompson offered

an explanation for the method of handling the transaction, which he said was for the purpose of obtaining cash quickly to meet payrolls and pay material-men, but the explanation does not show that Phoenix parted with anything or that any cash was made available to the bridge company.

The court also found that the issue of bonds for the alleged payments of \$10,000 to Industrial Contracting Co. and \$11,262.71 to McClintic-Marshall Co. was fraudulent. Shaffer & Co. owed these items and they were paid by Phoenix. Thompson through his wife caused entries to be made in the bridge company books showing the money to have been advanced to the bridge company by Phoenix. The liability of the bridge company is predicated upon the guaranty contract of November 10, 1930. But in a settlement agreement of August 6, 1931, Shaffer & Co. settled with the bridge company some disputed claims for extras [fol. 98] and received from the bridge company 200 shares of stock of the value of \$20,000 and securities of the value of \$2,475. Shaffer turned over to Thompson & Co., \$10,000 in value of the stock, and Thompson & Co. agreed to pay the claims of Industrial Contracting Co. and McClintic-Marshall Co., thereby releasing Shaffer & Co., the debtor. Assuming that the contract of guaranty of November 10, 1930, was valid, the court found that the bridge company was released. Whatever legal validity may be attributed to either contract, the fact remains that Thompson appears all the way through representing both the bridge company and the Phoenix interests, and in every instance to the disadvantage of the bridge company and to the advantage of the Phoenix interests. The finding of the court with respect to these two items must be sustained.

The master found that the bridge company received full consideration for the \$9,000 paid by Phoenix to Kramer & Hogg for the release of a mechanic's lien, and no consideration for the alleged payment of \$461.42. The court disallowed both items, the latter as not established by the evidence and the first on the ground that the plaintiffs were not entitled to any affirmative relief. The court found several items of value chargeable to Phoenix on the ground of fraud which much more than off-set the two items, if valid. Some of these findings abundantly supported by



the evidence will be noted. The guaranty contract of November 10, 1930, recites a delivery to Phoenix of 140 shares of bridge company stock of the value of \$14,000 in consideration of a guaranty by Phoenix to pay Shaffer & Co.'s obligations to McClintic-Marshall Co. and Industrial Contracting Co. in the event of Shaffer & Co.'s default and an agreement by the bridge company to repay Phoenix any sums which Phoenix might be required to pay on account of the guaranty. Thompson later waived the requirement of the contract that Shaffer & Co. should protect the bridge company with a surety bond. The court held that the contract was fraudulent and that there was no consideration for the \$14,000, and that Phoenix is indebted to the bridge company in that amount. Again, on November 5, 1930, Thompson purchased 65 shares of bridge [fol. 99] company stock at \$100 a share; on December 31st he purchased 170 shares, and A. B. Wilder, a director of the company 10 shares. Later Thompson wrongfully credited Thompson & Company, a subsidiary of Phoenix, on the books of the bridge company with a 15% commission on the sale of this stock in the amount of \$3,675. On November 1, 1931, Thompson and his companies turned over to the bridge company, when he was in control of its affairs, worthless notes in the amount of \$5,410.85, which had been taken in the sale of their own stock, and took from the bridge company an equal sum in cash. Other charges equally flagrant are found by the court. All of these findings, supported as they are by evidence, justified the court in holding that Phoenix is not entitled to credit for the \$9,000 and \$461.42 items.

The \$60,500 of bonds issued in exchange for 517 shares of preferred stock were clearly invalid. Section 19 of the General Corporation Laws of Delaware forbids a corporation to repurchase its own stock when to do so would impair its capital. It was stipulated that the bridge company had no surplus from which to make the purchase. Further, at that time there were outstanding other shares of preferred stock of the bridge company the holders of which were not given notice nor opportunity to surrender it, as required by the articles of incorporation of the bridge company. Thompson's explanation of this transaction is that the 517 shares were never sold outright,

but that Phoenix took the stock to sell to the public, and advanced money on it to the bridge company; and that the bridge company had agreed to pay such advances with interest. The form of the transaction was otherwise. The bridge company under a contract signed on its behalf by Thompson delivered \$10,000 and 3200 shares of its stock to Shaffer & Company in payment for the erection of the superstructure of the bridge. Shaffer & Co. sold the stock to Thompson and Company at 70 for a \$224,000 note. In selling the stock at 100 Thompson & Company made a profit of 30 per cent. The court was justified in finding that the transaction was what it purported to be instead of accepting Thompson's subsequent explanation. Thompson and Shaffer were both capable business men, advised by competent lawyers; it is reasonable, therefore, to believe that the contract of November 11, 1930, by the terms of which Shaffer & Company agreed to build the superstructure of the bridge correctly expressed the intention [fol. 100] of the parties.

The last \$20,100 of bonds were issued to Phoenix as collateral to secure a purported indebtedness of \$17,735.19. The master disallowed all but \$3,125 which was used to pay taxes. This is a just claim, but is more than off-set by the \$14,000 and other items referred to above. \$9,806.10 of the amount were furnished by Phoenix to pay interest on bonds held by Phoenix, which were known by the officers of Phoenix to be fraudulent. The transaction amounts to no more than a manipulation to obtain more bonds and increase the secured claims against the bridge company. \$1,505.75 was charged for salaries to Phoenix officers and employees. We find no argument of appellants in defense of this item. The remainder of the claim is for cash items alleged to have been advanced by Phoenix to the bridge company, which, if allowable, are wiped out by the indebtedness of Phoenix to the bridge company.

It is argued with great earnestness by appellants that notwithstanding appearances the bridge cost \$815,146.85 of which only \$653,659.23 were paid for by outstanding stock, and that the difference of \$161,487.62 was furnished by Phoenix; that the bridge company had no other source of income. This would be a formidable argument except

for the fact that the bookkeeping by which the result is reached is set out and it does not bear analysis. The figures are confuted by the facts.

We conclude that the record supports the lower court's findings with respect to lack of consideration for the \$177,600 of bonds issued to Phoenix.

Appellants' contention that the issuance of these bonds, was not fraudulent because it was accomplished in the exercise of business judgment by the management of the bridge company, without overreaching, and with the full knowledge and approval of the stockholders, is not sustained by the record. When the bond issue was proposed Thompson was president of the bridge company, as well as the dominant figure in Phoenix and the Thompson company. The bridge company's books were kept by employees of Phoenix, and it is not denied that Thompson at all times after November 1, 1930, managed the finances of the bridge company. In the December 31, 1931, balance sheet [fol. 101] of Phoenix Finance System, Inc., which was prepared under Thompson's direction, the bridge company is listed as a subsidiary. At the March 10, 1931, meeting of the directors, when the \$50,000 mortgage was given Phoenix for the "revolving checks," the only directors present were Thompson, V. W. O'Connor, who had been Shaffer's partner and who testified that he relied on Thompson and followed his directions, Wilder, who was a Phoenix director, and Thorson, who was made a director after Thompson took control, at Thompson's suggestion. At the meeting of November 10, 1931, when the bond issue was authorized, there were present 9 of the 11 directors, including Thompson, Wilder, English, who was another Phoenix director, M. White, who was Thompson's secretary and an officer in some of his companies, and Thorson. The resolution authorizing the bond issue recited that the corporation was indebted to Phoenix for \$50,000 secured by a mortgage, and to McClintic-Marshall for \$12,000 to Kramer & Hogg for \$13,000, to Phoenix for payments made to Industrial Contracting Co. \$10,000, and to other unnamed creditors \$40,000. Whether the directors were deceived by Thompson in this connection or whether they knew and acquiesced, they violated their duty to the stock-

holders in authorizing a bond issue to pay these non-existing obligations. When the management solicited proxies from the stockholders for approval of the bond issue at the stockholders meeting of December 22, 1931, similar misrepresentations were made. Consent of the stockholders obtained without disclosure of the circumstances does not excuse or ratify the fraud. *Farwell vs. Pyle-National Co.*, 289 Ill. 157, 124 N. E. 449; *Gross Iron Ore Co. vs. Paille*, 132 Minn. 160, 156 N. W. 269; 14a C. J. 100; 13 Am. Jur. Corporation sec. 978.

Appellants also complain of the terms of the decree as it affects bondholders other than Phoenix. The court found that \$5,000 worth of bonds had been issued in consideration of claims held in that amount; \$7,400 worth of bonds were issued to Helmer Anderson in consideration of a claim for \$6,000; and \$10,000 worth were issued to a firm of attorneys to secure a \$4,000 debt. Although the court found that note of these bondholders were holders in due course it concluded that equity should be done them so far as possible without doing greater injustice to [fol. 102] the estate. The decree therefore denied foreclosure as to any of the bonds, but provided that the income of the bridge be impounded until the \$15,000 of claims, found to be meritorious, should be paid. Appellants assert that in this respect the decree goes beyond the scope of the issues and takes property without due process from persons not parties to this suit. As has already been pointed out the trustees represent all of the bondholders for the purpose of determining whether the trust deed is valid. The pleadings put that issue before the court, and it has not been determined that the trust deed itself is not valid because it is tainted with fraud. The court also found that there had been no showing that any of these bondholders were bona fide purchasers. *Stewart vs. Lansing*, 104 U. S. 505, Iowa Code, Sec. 9519. If these findings are correct the decree is proper. Under the circumstances we think there is no room for the trustees to complain of the treatment given these claimants, since their equitable rights are fully protected.

Appellants further suggest in their brief that it is not shown that Phoenix Finance Corporation participated in the fraud, and that it is accordingly entitled to a decree

of foreclosure for the bonds held by it. This claim lacks merit. Thompson testified that Phoenix Finance Corporation was organized December 29, 1931, for the purpose of taking over all of the assets of Phoenix Finance System, Inc., and of several other corporations. After the consolidation had been effectuated the officers of Phoenix Finance System, Inc., became the officers of Phoenix Finance Corporation. The new corporation with the same officers was in full control when the board of directors of the bridge company adopted the resolution of July 7, 1933, authorizing the second issue of bonds with full notice of the circumstances surrounding their issue, and that it proceeded to adopt and carry on the fraudulent scheme of its predecessor. Since this finding is supported by evidence Phoenix Finance Corporation is in no better position to recover on the bonds than would be Phoenix Finance System, Inc., had the consolidation not been effected.

[fol. 103] After the decree had been entered the appellants filed a petition for rehearing, and Phoenix prayed in the alternative that the decree be modified (1) by reserving from adjudication the question of the validity of the \$50,000 mortgage dated March 10, 1931; (2) by permitting Phoenix to institute an action at law against the bridge company, if it so desires, for money had and received; and (3) by reinvesting in Phoenix the 517 shares of bridge company stock surrendered in exchange for bonds. The court overruled the petition both for rehearing and for modification of the decree. The petition for rehearing was properly denied. The granting of a rehearing is within the court's sound discretion, and a refusal to entertain a petition therefor, or the refusal of the petition, if entertained, is not the subject of appeal. *Wayne Gas Co. vs. Owens*, 300 U. S. 131, 137; *United States vs. Benz*, 282 U. S. 304; *United States vs. Mayer*, 235 U. S. 55; *Zimmern vs. United States*, 298 U. S. 167; *Aspen Mining Co. vs. Billings*, 150 U. S. 31, 36; *Roemer vs. Bernheim*, 132 U. S. 103; *Liebing vs. Matthews*, 8 Cir., 216 F. 1.

The petition for modification of the decree was properly refused. The request to withhold from adjudication the question of the validity of the \$50,000 mortgage and to permit Phoenix to sue for money had and received are



plainly without merit. These questions were within the issues properly decided in the decree. In refusing to modify the decree to require the bridge company to return to Phoenix the 517 shares of stock surrendered in exchange for bonds the court invoked the maxim that "He who had done iniquity shall not have equity." This "clean hands doctrine" is subject to the familiar limitation that a plaintiff is not barred from relief in a court of equity unless his wrong has an immediate and necessary relation to the equity for the enforcement of which he prays. *Keystone Co. vs. General Excavator Co.*, 290 U. S. 240; *Talbot vs. Independent Order of Owls*, 8 Cir., 220 F. 660; *Olsness vs. Home Ins. Co.*, 8 Cir., 14 F. (2d) 907; *Trice vs. Comstock*, 8 Cir., 121 F. 620; *Primeau vs. Granfield*, 2 Cir., 193 F. 911. In the present case the district court adopted the view that all of the transactions leading up to the issuance of the bonds were steps in a single fraudulent enterprise [fol. 104] to obtain ownership of the bridge after a foreclosure. We are not disposed to hold that this view of the lower court is wrong; and therefore we cannot say that appellants are entitled to have relief in equity in respect to any part of the fraudulent enterprise. It may be added that the record does not compel the inference that there was no fraud in the original issuance and transfer to Phoenix of the 517 shares of stock.

Having determined that the appellants had no standing to maintain their suit, the district court had neither the right nor the duty to compel the bridge company to restore what it had received from the bondholders. This is not a case in which the defrauded party is suing to rescind. Here the fraud has been pleaded only as a defense. Where the defrauded party is suing to rescind he must "do equity" by restoring whatever he received from the wrongdoer; but when the wrongdoer as plaintiff is attempting to enforce the tainted contract he is turned out of court empty handed. *Columbus vs. Mercantile Trust Co.*, 218 U. S. 645, 662; *Manufacturers' Co. vs. McKey*, 294 U. S. 442, 450; *Mortgage Corp. vs. Levy*, 5 Cir., 11 F. (2d) 270; *Connecticut Life Ins. Co. vs. Benedict*, 2 Cir. 88 F. (2d) 436; *Pomeroy*, *Equity Jurisprudence*, sec. 386; Cf. *Farrington vs. Stucky*, 8 Cir., 165 F. 325. In *Columbus vs. Mercantile Trust Co.*, *supra*, where the plaintiff was seek-



ing an injunction, the district court held that the plaintiff was not entitled to such an injunction, but found that the defendant had been guilty of certain inequitable conduct, and entered a decree requiring the defendant to do equity as a condition for dismissing the plaintiff's bill. The Supreme Court reversed, saying:

"The court justified the imposition of conditions under the maxim that he who seeks equity must do equity. But this maxim is one which applies to him who affirmatively seeks equitable relief. \* \* \* Manifestly the maxim cannot vest in the chancellor the power which has been exercised. It is true that the city by a cross bill asked to have the contract declared at an end for non-performance. But this was defensive relief."

[fol. 105] Under these long established principles of equity and the pleadings and proof in this cause the court did not err in refusing to modify the decree as requested by appellants by granting to complainants affirmative relief against the defendant.

For the foregoing reasons the decree of the district court is Affirmed.

A true copy.

Attest:

(Signed) E. E. KOCH,  
Clerk, U. S. Circuit Court of  
Appeals, Eighth Circuit.

(Seal)

[fol. 106]

Exhibit "F".

Sum Case

New Castle County,—ss.

The State of Delaware,

To the Sheriff of New Castle County—Greeting;

We command you, That you summon Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware late of your County company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the

Eighteenth day of September next to answer Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

Issued June 22, 1939

MARTIN G. HANNIGAN,  
Prothonotary.

(Reverse side)

No. 65 Sept. Term, A. D. 1939.

Phoenix Finance Corporation a corporation duly organized and existing under the laws of the State of Delaware,

vs.

Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware.

(Copy)

Sum Case

MM&L, Esqs. Pro. q.

[fol. 107]

Exhibit "G".

Sum Case

New Castle County—ss.

The State of Delaware,

To the Sheriff of New Castle County—Greeting:

We command you, That you summon Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware late of your County Company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Eighteenth day of September next to answer to Phoenix Finance Corporation a corporation duly organized and

existing under the laws of the State of Delaware of a plea that it hold and keep with it the covenant between them made according to the force and effect of certain articles of agreement between them, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

Issued June 22, 1939

MARTIN G. HANNIGAN,  
Prothonotary.

(Reverse side)

No. 64 Sept. Term A. D. 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

(Copy)

Sum Covenant

MM&L, Esqs. Pro. q.

[fol. 108]

Exhibit "H".

Sum Case

New Castle County—ss.

The State of Delaware,

To the Sheriff of New Castle County—Greeting:

We command You, That you summon

Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware

Late of your County company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Eighteenth day of September next to answer Phoenix Finance Corporation a corporation duly or-

ganized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

MARTIN G. HANNIGAN,  
Prothonotary.

Issued July 11, 1939

(Reverse side)

No. 79 Sept. Term, A. D. 1939.

Phoenix Finance Corporation a corporation duly organized and existing under the laws of the State of Delaware,

vs.

Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware.

(Copy)

Sum Case.

MM&L, Esqs. Pro. q

[fol. 109]

Exhibit "I"

Sum Case

New Castle County—ss.

The State of Delaware,

To the Sheriff of New Castle County—Greeting:

We Command You, That you summon Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware late of your County Company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Eighteenth day of September next to answer Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

Issued August 17, 1939

MARTIN G. HANNIGAN,  
Prothonotary.

(Reverse side)

(Copy) No. 159 Sept. Term A. D. 1939

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Sum Case

Marvel, Morford & Logan, Esqs.

By. James R. Morford, Esq.

Pro. q

[fol. 110] (Motion for Leave to [Filed] Amendment to Supplemental and Ancillary Bill of Complaint.)

Comes now the defendant, Iowa-Wisconsin Bridge Company, and moves the Court for leave to file amendment to its Supplemental and Ancillary Bill of Complaint, a copy of which amendment is herewith presented.

Dated September 28, 1939.

FRED A. ONTJES,  
WM. C. GREEN,  
Attorneys for Defendant, Iowa-  
Wisconsin Bridge Company.

Filed in the District Court September 28, 1939.

[fol. 111] (Amendment to Supplemental and Ancillary Bill of Complaint.)

Comes now the defendant, Iowa-Wisconsin Bridge Company, and with leave of Court amends its Supplemental and Ancillary Bill of Complaint as follows, to-wit:

(1) By adding to sub-paragraph (c) of paragraph 7 thereof, the following:

That the alleged cause of action in said suit is based upon an alleged promissory note of \$500.00 dated December 31, 1932, an alleged promissory note for \$12,110.19 dated July 7, 1933, an alleged claim for \$15,000 for money claimed to have been lent and advanced by defendant to plaintiff in that case, and upon an alleged claim for \$7000.00 claimed to have been for money due and payable from the defendant to the plaintiff in that case, Phoenix Finance Corporation, for interest and forbearance. That the said alleged promissory notes of \$500.00 and \$12,110.19 were involved in the above entitled cause and the adjudication thereof; that in this cause it was claimed that said notes and the alleged considerations therefore formed part of the consideration for the issuance of \$20,100 of bonds involved in this action. That this court found that the said bonds were fraudulently issued and wholly without consideration and were more than offset by indebtedness of Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc. to this defendant, Iowa-Wisconsin Bridge Company. That as to the alleged claim for \$15,000.00 this is a mere restatement of the alleged cause of action on the notes aforesaid stated in different form and in the alternative and the alleged claim for \$7000.00 is merely a claim [fol. 112] for interest on the notes aforesaid set in a different form and in the alternative. That all of the alleged claims were involved in and adjudicated in the above-entitled cause in this court.

(2) by adding to sub-paragraph (d) of paragraph 7 the following:

That the alleged cause of action in said suit is based on an alleged agreement claimed to have been entered into between Phoenix Finance System, Inc., John W. Shaffer and Company, and Iowa-Wisconsin Bridge Company dated



November 10, 1930, under and by virtue of which said Phoenix Finance Corporation claims defendant became indebted to Phoenix Finance System, Inc. in the sum of \$21,262.71, claims to be the assignee of said Phoenix Finance System, Inc. and claims the total sum of \$50,000.00 for principal and interest; that attached to the declaration in said case is a copy of said purported agreement. That said agreement so referred to in said declaration and sued upon is the same agreement described and referred to by the court in its finding of fact #24, appearing at pages 13, 14 and 15 of Exhibit B attached to the Supplemental and Ancillary Bill of Complaint, which the Court found to be without consideration, a fraud upon the bridge company, void and ultra vires.

(3) By adding to sub-paragraph (e) of paragraph 7 the following:

That the alleged cause of action in said suit is based on certain of the bonds which were involved in the above-entitled action, to-wit: one Series B Bond No. 93 in the face amount of \$500.00; one Series B Bond No. 97 in the face amount of \$500.00. That this Court in final decree, adjudged and held that all bonds held by Phoenix Finance Corporation were invalid, fraudulent and issued without consideration, and that this Court found certain bonds which had been issued to Helmer Anderson in the total amount of \$7400.00 to be valid to the extent of \$6000.00 [fol. 113] only, and directed that said sum of \$6000.00 be paid from income of the bridge company; that said Series B Bonds Nos. 93 and 97, upon which suit has been commenced in the State of Delaware, as hereinbefore set forth, are portions of the \$7400.00 of the bonds issued to Helmer Anderson and allowed in part by this Court as aforesaid.

(4) By adding to sub-paragraph (f) of paragraph 7 the following:

That the alleged cause of action in said suit is based on a claim that the Phoenix Finance Corporation on June 22, 1931 purchased from the defendant certain toll bridge tickets of denominations aggregating \$5000.00; that said toll tickets were on June 27, 1939 tendered and presented to an agent or employee of the defendant with a request that they be accepted for toll charged and that they were

not so accepted: that a demand was made upon the defendant to honor an alleged contract assumed by it when said tickets were sold to the assignor of Phoenix Finance Corporation, said Phoenix Finance Corporation claiming damages in the sum of \$5000.00. That said sum of \$5000.00 referred to and recovery of which is asked in said action was involved in the accounts between the defendant, Phoenix Finance Corporation, Phoenix Finance System, Inc. and Thompson and Company, all of which entered into and were fully determined by this court in the above entitled action; and that since the entry of the decree in the above entitled action there have been no business transactions whatsoever between the defendant, Iowa-Wisconsin Bridge Company and Phoenix Finance Corporation or its predecessor.

(5) By striking out all of paragraph 8 except the words "This defendant alleged that it has had no business with the said Phoenix Finance Corporation since the commencement of this action."

FRED A. ONTJES,  
WILLIAM C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Company.

[fol. 114] United States of America,  
United States District Court,  
Northern District of Iowa—ss.:

Fred A. Ontjes and William C. Green being first duly sworn each for himself deposes and says that he is one of the attorneys for the defendant in the above entitled action; that he has read the above and foregoing amendment to supplemental and ancillary bill of complaint and knows the contents thereof and that the same is true.

FRED A. ONTJES,  
WILLIAM C. GREEN.

Subscribed and sworn to before me this 28th day of September, A. D. 1939.

(Seal)

LEE McNEELY,  
Clerk of the U. S. District Court,  
Northern District of Iowa.

Filed in the District Court, September 28, 1939.

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[fol. 115] (Motion of Iowa-Wisconsin Bridge Company for Preliminary Injunction.)

Comes now Iowa-Wisconsin Bridge Company, the defendant in the above entitled action by Fred A. Ontjes and W. C. Green, its attorneys, and moves the court to grant a Writ of Injunction against the defendant Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys and all those acting by or through or for it or them pending this suit and until the further order of the court, conformable to the prayer of the Supplemental and Ancillary Bill of defendant Iowa-Wisconsin Bridge Company on file.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for defendant,  
Iowa-Wisconsin Bridge Co.

Filed in the District Court, September 18, 1939.

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[fol. 116] (Order Fixing Time for Hearing of Motion for Preliminary Injunction.)

This cause came on for hearing on the motion of the defendant, Iowa-Wisconsin Bridge Company, to fix the time for hearing of application and motion for preliminary injunction herein, the defendant, Iowa-Wisconsin Bridge Company appearing by its attorney, F. A. Ontjes, and the Phoenix Finance Corporation, Complainant, appearing by its attorney, Casper Schenk, and the Court being fully advised in the premises, it is hereby

Ordered that the said application and motion be heard before the District Court of the United States, in the United States Court Room, in the City of Cedar Rapids, State of Iowa, on the 28th day of September, 1939, at two o'clock P. M., and that ten days' notice of this order be served on the Phoenix Finance Corporation, complainant, by service of the same on Casper Schenk as its resident agent and as its attorney of record.

Dated this 18th day of September, A. D. 1939.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, September 18, 1939.

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[fol. 117] (Notice of Hearing of Motion for Preliminary Injunction.)

To Phoenix Finance Corporation and to Casper Schenk, its attorney:

Please Take Notice that upon the verified Supplemental and Ancillary bill of defendant on file in the above entitled cause and the exhibits and papers referred to in said Supplemental and Ancillary Bill and upon all the records and files in the above entitled action and upon such affidavits and further evidence as the defendant may offer in the United States Court Room in the Federal Building in the City of Cedar Rapids, State of Iowa, on the 28th day of September, 1939 at 2 o'clock P. M. or as soon thereafter as the same can be heard by the court the application and motion of defendant, Iowa-Wisconsin Bridge Company for preliminary injunction against the complainant Phoenix Finance Corporation in accordance with the prayer of said Supplemental and Ancillary Bill and for such other and further relief in the premises as to the court may seem just and proper will be heard; that an order has been entered by the court fixing said time and place for hearing, copy of which order is hereto attached marked Exhibit A and made a part hereof.

Dated this 18th day of September A. D. 1939.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for defendant,  
Iowa-Wis. Bridge Co.

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[fol. 118] Exhibit A.

(Order Fixing Time of Hearing and Notice.)

This cause came on for hearing on the motion of the defendant, Iowa-Wisconsin Bridge Company to fix the time for hearing of application and motion for preliminary injunction herein, the defendant, Iowa-Wisconsin Bridge Company appearing by its attorney, F. A. Ontjes, and the Phoenix Finance Corporation Complainant, appearing by its attorney, Casper Schenk, and the Court being fully advised in the premisses, it is hereby

Ordered that the said application and motion be heard before the District Court of the United States, in the United States Court Room, in the City of Cedar Rapids, State of Iowa, on the 28th day of September, 1939, at two o'clock P. M., and that ten days' notice of this order be served on the Phoenix Finance Corporation, complainant, by service of the same on Casper Schenk as its resident agent and as its attorney of record.

Dated this 18th day of September, A. D. 1939.

GEO. C. SCOTT,  
United States District Judge.

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[fol. 119] (Marshal's Return.)

This Notice came into my hands at Waterloo, Iowa, on September 18, 1939 and I served the Phoenix Finance Corporation by delivering a true copy of this notice after the reading thereof was waived upon Casper Schenk who is the registered resident agent in Iowa for the said Phoenix Finance Corporation on September 18, 1939.

I also served Casper Schenk, its Attorney of Record, by delivering to him a true copy of this Notice after the reading thereof was waived at Waterloo, Iowa, on September 18, 1939.

JOHN B. KEEFE,  
United States Marshal.

Filed in the District Court, September 18, 1939.

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[fol. 120] Affidavit in Support of Motion for Preliminary Injunction.

Comes now the Iowa-Wisconsin Bridge Company and in further support of its motion for preliminary injunction presents the affidavit which is hereto attached, marked Exhibit "A" and made a part hereof.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Company.

Filed in the District Court, September 28, 1939.

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State of Iowa,

Cerro Gordo County.—ss.:

F. A. ONTJES and W. C. GREEN, being first duly sworn each for himself deposes and says that he is one of the attorneys for the defendant in the above entitled action; that since the preparation of the Supplemental and Ancillary Bill herein and on the same day said supplemental and Ancillary Bill was filed in the office of the Clerk of this Court, to-wit; on the 18th day of September, 1939, there were filed in the Superior Court of the State of Delaware in and for New Castle County the cases referred to in sub-paragraphs C and E of paragraph seven of the Supplemental and Ancillary Bill declarations and affidavits of demand and in the cases referred to in sub-paragraphs D and F of said paragraph seven, declarations setting forth the claimed causes of action of Phoenix Finance Corporation in said suits; that the alleged cause of action in the suit referred to in sub-paragraph C aforesaid is based upon an alleged promissory note of \$500.00 dated December 31, 1932, an alleged promissory note for \$12,110.19 dated July 7, 1933, an alleged claim for \$15,000 for money claimed to have been lent and advanced by defendant to plaintiff in that case and upon an alleged claim for \$7000.00 claimed to have been for money due and payable from the defendant to the plaintiff in that case, Phoenix Finance Corporation, for interest and forbearance. That the said alleged promissory notes of \$500.00 and \$12,110.19 were involved in the above entitled cause and the adjudication thereof; that in this cause it was claimed that said notes and the alleged considerations therefor formed part of the consideration for the issuance of \$20,100 of bonds involved in this action. That this court found that the said bonds were fraudulently issued and wholly without consideration and were more [fol. 122] than offset by indebtedness of Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc., to this defendant, Iowa-Wisconsin Bridge Company. That as to the alleged claim for \$15,000.00 this a mere restatement of the alleged cause of action on the notes aforesaid stated in different form and in the alternative and the alleged claim for \$7000.00 is merely a claim for interest on



the notes aforesaid set in a different form and in the alternative. That all of the alleged claims were involved in and adjudicated in the above entitled cause in this court. That the case referred to in sub-paragraph D of said paragraph seven of the Supplemental and Ancillary Bill is based on an alleged agreement claimed to have been entered into between Phoenix Finance System, Inc., John W. Shaffer and Company and Iowa-Wisconsin Bridge Company dated November 10, 1930, under and by virtue of which said Phoenix Finance Corporation claims defendant became indebted to Phoenix Finance System, Inc., in the sum of \$21,262.71, claims to be the assignee of said Phoenix Finance System, Inc., and claims the total sum of \$50,000.00 for principal and interest; that attached to the declarations in said case is a copy of said purported agreement. That said agreement so referred to in said declaration and sued upon is the same agreement described and referred to by the court in its finding of fact #24, appearing at pages 13, 14 and 15 of Exhibit B attached to the Supplemental and Ancillary Bill of Complaint, which the court found to be without consideration, a fraud upon the bridge company, void and ultra vires.

That the case referred to in sub-paragraph E of said paragraph seven is based upon certain of the bonds which were involved in the above entitled action, to-wit: one Series B Bond No. 93 in the face amount of \$500.00; one Series B Bond No. 97 in the face amount of \$500.00.

[fol. 123] This Court in its final decree adjudged and held that all bonds held by Phoenix Finance Corporation were invalid, fraudulent and issued without consideration, and this Court found certain bonds which had been issued to Helmer Anderson in the total amount of \$7400.00 to be valid to the extent of \$6,000.00 only, and directed that said sum of \$6,000.00 be paid from income of the bridge company. That said Series B Bonds numbers 93 and 97 upon which suit has been commenced in the State of Delaware as hereinbefore set forth are a portion of the \$7400.00 of the bonds issued to Helmer Anderson and allowed in part by this Court as aforesaid.

That the case referred to in sub-paragraph F of said paragraph seven is based upon a claim that the Phoenix

Finance Corporation on June 22, 1931 purchased from the defendant certain toll bridge tickets of denominations aggregating \$5000.00; that said toll tickets were on June 27, 1939, tendered and presented to an agent or employee of the defendant with a request that they be accepted for toll charges and that they were not so accepted; that a demand was made upon the defendant to honor an alleged contract assumed by it when said tickets were sold to the assignor of Phoenix Finance Corporation, said Phoenix Finance Corporation claiming damages in the sum of \$5000.00. That said sum of \$5000.00 referred to and recovery of which is asked in said action was involved in the accounts between the defendant, Phoenix Finance Corporation, Phoenix Finance System, Inc. and Thompson and Company, all of which entered into and were fully determined by this court in the above entitled action; and that as is set forth in the Supplemental and Ancillary Bill of Complaint, since the entry of the decree in the above entitled action there have been no business transactions whatsoever between the defendant Iowa-Wisconsin Bridge Company and Phoenix Finance Corporation or its predecessor.

[fol. 124] That attached to this Affidavit and made a part hereof, as Exhibits 1, 1-a, 2, 3, 3-a, 4, 5, 5-a, and 6, are copies of the declarations, and in the cases where affidavits of demand were filed, such affidavits of demand, filed in the Courts of the State of Delaware, in the cases referred to in paragraphs A, B, C, D, E, and F of paragraph seven of the Supplemental and Ancillary Bill of Complaint herein.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Co.

Subscribed and sworn to before me by the said F. A. Ontjes  
and W. C. Green this 27th day of September, A. D.  
1939.

BESSIE G. ENGLE,  
Deputy Clerk, U. S. District Court,  
Northern District of Iowa.

(Seal)

My Commission expires .....

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[fol. 125]

Exhibit "6".

In the Superior Court of the State of Delaware In and For  
New Castle County.

September Term, 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 159. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

New Castle County:—ss.:

Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, the defendant in this suit, was summoned to answer Phoenix Finance Corporation, a corporation of the State of Delaware, the plaintiff in this suit, of a plea of trespass on the case, and thereupon the said plaintiff, by Marvel, Morford & Logan, its attorneys, complains:

For That Whereas, the said defendant at all the times herein mentioned was and is the owner and proprietor of a certain toll bridge crossing the Mississippi River at Lansing, Iowa, known as the Black Hawk Bridge, and that heretofore, to-wit, on the 22nd day of June, A. D., 1931, at Allamakee County, State of Iowa, to-wit, at New Castle County aforesaid, Thompson & Co., a body corporate, purchased from the defendant toll bridge tickets for said Black Hawk Bridge of denominations aggregating Five Thousand Dollars (\$5,000.00), lawful money of the United States of America, and thereupon paid to the said defendant the sum of Five Thousand Dollars (\$5,000.00) therefor; that said toll bridge tickets so purchased by Thompson & Co. were contained in one thousand (1,000) toll ticket books, each containing Five Dollars (\$5.00) in face value of toll tickets, said books bearing serial numbers 601 to 800 inclusive, and 1,701 to 2,500 inclusive; that each of said one thousand (1,000) toll ticket books was and is in words, figures and contents identical each with the other except that each book [fol. 126] has and had a separate serial number stamped on the cover thereof; that each such book contained six

red tickets, each of the value of fifty cents, four blue tickets, each of the value of twenty-five cents, and ten orange tickets, each of the value of ten cents. By reason of the foregoing, the said Thompson & Co. so purchased from the defendant six thousand (6,000) of said toll bridge tickets of the denomination or value of fifty cents, four thousand (4,000) of said toll bridge tickets of the denomination or value of twenty-five cents, and ten thousand (10,000) of said toll bridge tickets of the denomination or value of ten cents, and that attached hereto, marked Exhibit "A" and by this reference made a part of this declaration are photostat copies of the bridge toll tickets of each of said denominations, and the plaintiff says that each ticket so sold to Thompson & Co. is the same as the photostat of the ticket of the corresponding denomination as so shown by Exhibit "A".

And the said plaintiff further says that by reason of the premises, the said defendant, in manner and form as aforesaid and at the time and place aforesaid, undertook and faithfully promised said Thompson & Co. that it would honor and accept said toll bridge tickets upon presentation thereof for the payment of toll charges for the passage of vehicles and passengers over said Black Hawk Bridge.

And the said plaintiff further says that thereafter, to-wit, on or about the 1st day of October, A. D., 1931, said Thompson & Co., for a valuable consideration, assigned, transferred and set over to the plaintiff herein all of its right, title and interest in and to said toll bridge tickets and delivered the same to the said plaintiff; that thereafter, to-wit, on the 27th day of June, A. D. 1939, the said plaintiff, by and through its agent or representative, tendered and presented all of said toll bridge tickets to the agent or employee of the defendant in charge of the taking of toll over said Black Hawk Bridge with the request that the defendant's said employee choose from said tickets a sufficient number thereof in the amount and denomination to pay the charge for toll over the Black Hawk Bridge of the plaintiff's said agent or representative an automobile then and [fol. 127] and there in charge of the plaintiff's said agent or representative and passengers therein contained, but that the defendant's said agent then and there refused to

accept said tender or any part thereof for the payment of tolls, and the plaintiff's said agent or representative was thereupon required to pay and did pay to the defendant's agent the sum of fifty cents in cash, representing the toll charged by the defendant at the time aforesaid for passage over the Black Hawk Bridge for the plaintiff's agent or representative, said automobile and the passengers therein contained.

That thereafter, to-wit, on the 8th day of July, 1939, the plaintiff, by its attorneys, made written demand upon the defendant by a registered communication duly received by the defendant, in words and figures as follows, to-wit:

"Iowa-Wisconsin Bridge Company,  
Lansing, Iowa.

Gentlemen:

On or about June 22, 1931, Thompson & Co. purchased from your Company Black Hawk Bridge toll ticket books Nos. 601 to 800, both inclusive, and 1701 to 2500, both inclusive, making a total of 1000 toll ticket books, each containing \$5 face value of toll tickets. For these toll tickets, Thompson & Co. paid your Company on or about the above mentioned date the sum of \$5000. The toll bridge tickets included in the above mentioned books are at 50¢, 25¢ and 10¢ denominations. For your further information, you are advised that each of the 1000 toll ticket books is exactly alike except that each has its own separate serial number stamped upon its cover and each book alike contains six red tickets each of 50¢ value, four blue tickets each of 25¢ value, and ten orange tickets each of 10¢ value.

You are advised that Phoenix Finance Corporation succeeded to all of the rights of Thompson & Co. with respect to these toll tickets, and on August 4, 1937, said last mentioned Company addressed a letter to Oscar R. Thorson, Receiver, with respect to the contemplated disposal of said tickets, and a true and correct copy of said letter is attached hereto for your information. Mr. Thorson responded under date of August 7, 1937, and thereby Phoenix Finance Corporation was advised that the toll takers at the Bridge would not honor such toll tickets. A true and correct copy



of Mr. Thorson's reply of August 7th is also enclosed herewith for your information.

Subsequently on June 27, 1939, a representative of Phoenix Finance Corporation tendered the above mentioned toll ticket books to the toll taker at the Black Hawk Bridge in payment of toll, and such toll taker refused to accept the tender or any part thereof in payment of the charge for passage over this Bridge. In so refusing to accept these toll tickets or any of the same for passage over the Bridge, the toll taker stated substantially as follows:

[fol. 128] 'My superiors who have charge of this Bridge have instructed me to refuse all of these toll tickets and not to honor any of them for the payment of tolls over this Bridge.'

Demand is hereby made upon you to honor the contract assumed by you when these tickets were sold to the assignor of Phoenix Finance Corporation and that we be advised that these tickets will be honored in their respective denominations for passage over the Bridge at the usual and prevailing rates, or in the alternative that you pay to Phoenix Finance Corporation as the successor to the rights of Thompson & Co. the sum of \$5,000 plus lawful interest thereon from the 22nd day of June, 1931.

You are requested to advise the undersigned by return mail whether or not your Company will honor these toll tickets, or in the alternative pay the above mentioned sum of money.

Very truly yours,

MARVEL, MORFORD & LOGAN,  
Attorneys for Phoenix Finance Corporation."

And the said plaintiff further says that the defendant has wholly failed and refused to acknowledge said last mentioned demand or to advise the plaintiff that said toll tickets would be acceptable for passage over the Black Hawk Bridge, and by reason of the premises the plaintiff says that the defendant, upon presentation, tender and demand, as aforesaid, has refused to honor and accept said toll bridge tickets, or any part thereof, for the payment of toll charges for the passage of vehicles and passengers over said Black Hawk Bridge, owned by it as aforesaid, and by



reason of the premises, the plaintiff says that it is injured and has sustained damage in the sum of Five Thousand Dollars (\$5,000), lawful money of the United States of America, with lawful interest thereon from the 22nd day of June, A. D., 1931, and therefore it brings its suit, etc.

MARVEL, MORFORD & LOGAN,  
Attorneys for Plaintiff.

[fol. 129] "Black Hawk Bridge

Crossing - - - - - Mississippi  
Lansing, Iowa - - - - - De Soto, Wis.

50¢

Iowa-Wisconsin Bridge Co."

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"Black Hawk Bridge

Crossing - - - - - Mississippi  
Lansing, Iowa - - - - - De Soto, Wis.

25¢

Iowa-Wisconsin Bridge Co."

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"Black Hawk Bridge

Crossing - - - - - Mississippi  
Lansing, Iowa - - - - - De Soto, Wis.

10¢

Iowa-Wisconsin Bridge Co."

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[fol. 130] (Note by the Clerk of the District Court: Copies of certain other exhibits which are attached to and made a part of the original of the foregoing Affidavit in Support of Motion for Preliminary Injunction are omitted here because they are a part of Exhibits S. C.-1, S. C.-2, S. C.-3, S. C.-4 and S. C.-5 which are shown at folio pages 393 to 468 of this transcript.)

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[fol. 131] (Resistance of Phoenix Finance Corporation to Application and Motion for Preliminary Injunction.)

Now comes Phoenix Finance Corporation, one of the complainants above named and the defendant in the supplemental and ancillary bill filed in this cause, and specifically reserving all right of objection to the jurisdiction of this Court to grant the relief prayed in said supplemental and ancillary bill, respectfully shows to the Court that said application and motion for a preliminary injunction as prayed in said supplemental and ancillary bill should be denied for the following reasons:

1. That Iowa-Wisconsin Bridge Company, the complainant in the supplemental and ancillary bill, and the defendant in the cause pending in the Superior Court of the State of Delaware, set forth in paragraph (7)(a) of the supplemental and ancillary bill, has appeared generally and by counsel in said cause, pleaded to the plaintiff's declaration therein, including inter alia the plea of res adjudicata, has tried said cause on the merits thereof before the judges of the Superior Court of the State of Delaware in and for Newcastle County after having formally waived trial by jury and after having waived by stipulation all defenses, including want of consideration, except said plea of res adjudicata, and by and through its counsel has argued orally and has filed both original and reply briefs in support of its said plea, said cause being now under consideration, and as yet undetermined by the judges of said Court.

2. That Iowa-Wisconsin Bridge Company, the complainant in the supplemental and ancillary bill and the defendant in the cause pending in the Court of Chancery of

the State of Delaware, set forth in paragraph (7)(b) of the [fol. 132] supplemental and ancillary bill, has appeared generally by its solicitors in said cause and has filed an answer to the bill of complaint therein, which said answer, by its terms, formally raises, presents and pleads the defense of res adjudicata or estoppel by the record of the proceeding and decree in the above stated cause.

3. That Iowa-Wisconsin Bridge Company, the complainant in the supplemental and ancillary bill filed in this cause and the defendant in the causes alleged in paragraphs (7)(c), (7)(d), (7)(e) and (7)(f) of the supplemental and ancillary bill, which causes are pending in the Superior Court of the State of Delaware in and for Newcastle County, has caused general appearances to be entered by its attorneys in each of said causes and in the causes set forth in paragraphs (7)(c) and (7)(e), has applied to the Court and has obtained extensions of time for filing affidavits of defense until October 3, 1939, and that in all of said causes, if the allegations of fact and the conclusions of law as stated and advanced in the supplemental and ancillary bill are true and correct, Iowa-Wisconsin Bridge Company has adequate and complete defenses by way of res adjudicata or estoppel by the decree in the cause above mentioned.

4. That it does not appear from the supplemental and ancillary bill that the causes of action stated in paragraphs (7)(a), (7)(b), (7)(c), (7)(d), (7)(e) and (7)(f) thereof, or any of them, relate to an issue or issues adjudicated in fact by this Court in its decree in the cause above stated; [fol. 133] that particularly with respect to the causes stated in paragraphs (7)(c), (7)(d), (7)(e) and (7)(f), no facts are alleged in the supplemental and ancillary bill to show what issues are tendered thereby, and that the allegations of the supplemental and ancillary bill with respect thereto are otherwise indefinite, uncertain and insufficient.

5. That there has been no adjudication by this Court of the issues tendered in the several causes of action pending in the Delaware Courts and referred to in paragraphs

(7)(a) and (7)(b) of the supplemental and ancillary bill, in that Phoenix Finance Corporation, the defendant in said supplemental and ancillary bill, was not such a party to the above stated cause that this Court could make such a valid adjudication on said issues against it as to be entitled to full faith and credit either in the courts of the State of Delaware or elsewhere.

6. That none of the issues tendered in the causes in the Delaware Courts as set forth in paragraphs (7)(a), (7)(b), (7)(c), (7)(d), (7)(e) and (7)(f) of the supplemental and ancillary bill were tendered or validly adjudicated in the above stated cause, in that Phoenix Finance Corporation was not an indispensable party in said cause, said issues were not tendered in fact by the pleadings therein, and, having no knowledge or intimation that there would be a purported adjudication on said issues, Phoenix Finance Corporation did not offer and has had no opportunity to offer testimony on its behalf with respect thereto.

[fol. 134] 7. That the cause of action mentioned in paragraph (7)(b) of the supplemental and ancillary bill relates to a matter concerning the internal management and corporate structure of Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, and presents an issue solely within the jurisdiction of the Court of Chancery of the State of Delaware and solely cognizable thereby; that the causes of action mentioned in paragraphs (7)(a) (7)(c), (7)(d), (7)(e) and (7)(f) of the supplemental and ancillary bill are for money judgments only and belong solely within the jurisdiction of the law courts, where Iowa-Wisconsin Bridge Company is amenable to service of process; that said actions having been brought in the Superior Court of the State of Delaware, a law court of general civil jurisdiction, and Iowa-Wisconsin Bridge Company having been properly served with process therein, said Superior Court has jurisdiction thereof; that if, as contended by the complainant in the supplemental and ancillary bill, there has heretofore been a valid adjudication in this Court of all the issues tendered in said causes, which adjudication is binding upon Phoenix Finance Corporation as a party to said cause and which adjudication is entitled to full faith and credit under the Constitution of the United States, said complainant, Iowa-Wisconsin

Bridge Company, as the defendant in said Delaware actions, has a full, adequate and complete defense in each such action, to-wit, the defense of res adjudicata or estoppel by decree; and that this Court, sitting as a Court of Equity, should not interfere to restrain the prosecution of [fol. 135] said actions upon the mere legal grounds available to Iowa-Wisconsin Bridge Company by way of defense therein.

8. That said application and motion and said supplemental and ancillary bill show that the proceedings in the State of Delaware sought to be enjoined as set forth in paragraphs (7)(a), (7)(c), (7)(d), (7)(e) and (7)(f) of the supplemental and ancillary bill are simple actions in personam at law to establish legal liability and are for money judgments only, and that the proceeding mentioned in paragraph (7)(b) of the supplemental and ancillary bill concerns a matter peculiarly within the jurisdiction of the Court of Chancery of the State of Delaware; that said proceedings do not, and will not tend to defeat nor impair this Court's jurisdiction over the above entitled foreclosure suit nor the decree entered therein; nor do they affect the Court's control, possession or disposition of the properties formerly held by the mortgage trustees and now in the possession of this Court; that the movant has clear, adequate, and speedy remedies both at law and in said equity cause and that its said application is without equity.

9. That the injunctive relief sought by the supplemental and ancillary bill is prohibited by Section 265 of the Judicial Code of the United States.

10. That in the above stated cause this Court held that Phoenix Finance Corporation, the defendant to said supplemental and ancillary bill, was "not an indispensable party," but merely a "nominal or formal party," and that, even though it were a citizen of the same State as Iowa-Wisconsin Bridge Company, its presence did not oust the jurisdiction of this Court; that the decree entered in said cause by virtue of the jurisdiction so announced, adjudicated solely the right to a foreclosure of a mortgage deed of trust concerning property the possession of and title to which stood in the name of said complainant trust-

tees; that the legal title to the notes, accounts, and choses in action against the Iowa-Wisconsin Bridge Company and belonging to Phoenix Finance Corporation, were never in the possession of said trustees; that said trustees had neither right, title nor interest in them, nor any duty in respect to them; that said trustees could not and did not represent Phoenix Finance Corporation in respect to its said notes, accounts and choses in action; that said decree in said foreclosure cause did not, and could not, adjudicate the rights of Phoenix Finance Corporation nor the liabilities of Iowa-Wisconsin Bridge Company with respect to such notes, accounts and choses in action in a suit to which it was merely a nominal and formal party; that said decree against said trustees could not and did not constitute an adjudication by representation or otherwise, with respect to such notes, accounts, and choses in action which were not, never were, and are not part of the trust res before the Court; and that, under the Constitution of the United States, Phoenix Finance Corporation could not lawfully be deprived of its said property and property rights without due process of law, in a judicial proceeding to which it was an indispensable party and pursuant to issues properly pleaded, of which it had notice and with [fol. 137] respect to which it had an opportunity to offer testimony in its behalf.

11. That the supplemental and ancillary bill does not show either an actual or theoretical inadequacy of legal or other remedy nor any facts to move the sound discretion of this Court, sitting as a court of equity.

12. That there is no practical necessity for the granting of injunctive relief as prayed in the supplemental and ancillary bill and there is no lawful justification for the assumption that, and no reason why, Iowa-Wisconsin Bridge Company cannot maintain the same rights and defenses in the courts of its domicile as in this Court.

13. That for the reasons herein stated Phoenix Finance Corporation is not disregarding any adjudication, order or decree of this Court; that the Delaware litigation to which reference is made in the supplemental and ancillary bill is not for the purpose of attempting to invalidate and nullify any decree or order of this Court, is not for the purpose of



depriving Iowa Wisconsin Bridge Company of the fruits of any adjudication and is not for the purpose of harassing, vexing, annoying and destroying business of said company; that Phoenix Finance Corporation is not prosecuting and has no intention of prosecuting any suits or actions in Delaware or elsewhere involving matters fully and finally determined by this Court; that it may properly maintain and prosecute, either in the court of the domicile of Iowa-Wisconsin Bridge Company or elsewhere, where proper service may be obtained, (except in the Federal Courts) actions, in personam, against Iowa-Wisconsin Bridge Company to enforce the liabilities of said company upon its contracts and other personal obligations and, for [fol. 138] the reasons above stated, may sue in the Court of Chancery of Delaware to require the reissuance to it of the 517 shares of the preferred stock of Iowa-Wisconsin Bridge Company unlawfully withheld from it by said Company; and that such actions, suits and proceedings may not now, nor at any time could have been maintained or prosecuted in this or in any other Federal Court, because of the lack of diversity of citizenship between Phoenix Finance Corporation and Iowa-Wisconsin Bridge Company, both corporations of the State of Delaware as aforesaid.

14. In order that the Court may be advised with respect to the nature and character of the suits in the Superior Court of The State of Delaware, indefinitely described in paragraphs (7) (c), (7) (d), (7) (e) and (7) (f) of the supplemental and ancillary bill, Phoenix Finance Corporation has filed with this resistance true and correct copies of the declarations filed therein, which declarations fully define the causes of action sought to be asserted by Phoenix Finance Corporation. For convenient reference to the corresponding paragraphs of the supplemental and ancillary bill said declarations are marked "(7) (c)", "(7) (d)", "(7) (e)" and "(7) (f)" respectively.

Wherefore, Phoenix Finance Corporation respectfully prays that said application and motion for preliminary injunction be denied at movant's cost.

JAMES R. MORFORD,  
CASPER SCHENK,  
Attorneys for Phoenix Finance  
Corporation.

[fol. 139] State of Iowa,  
Linn County—ss.:

James R. Morford being duly sworn deposes and says that he is one of the Attorneys for Phoenix Finance Corporation in the above entitled cause; that he has read the above and foregoing Resistance to the Application and Motion for a preliminary injunction and that the facts set forth therein are true as he verily believes.

JAMES R. MORFORD.

Subscribed and sworn to before me by the said James R. Morford this 28th day of September, A. D. 1939.

(Seal) ETHEL J. BARRETT,  
Notary Public in and for  
Linn County, Iowa.

My commission expires July 4, 1942.

Filed in the District Court September 28, 1939.

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[fol. 140] (Note by the clerk of the District Court: Exhibits 7 (c), 7 (d) and 7 (e) which are a part of Resistance of Phoenix Finance Corporation to application and motion of Iowa-Wisconsin Bridge Company for preliminary injunction are omitted here because 7 (c) is a part of Exhibit SC-103 which begins at folio page 596; 7 (d) is a part of Exhibit SC-104 which begins at folio page 650; and 7 (e) is a part of Exhibit SC-105 which begins at folio page 677, of this transcript.)

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[fol. 141] (Extract from reporter's transcript of hearing at Cedar Rapids, September 28, 1939, on motion for preliminary injunction.)

Mr. Ontjes: " \* \* \* We further offer in evidence in support of the bill the affidavits filed to it in further support of the preliminary injunction of F. A. Ontjes and W. C. Green, the original of which has been filed and a copy of which is in the possession of the defendant—plaintiffs here I mean, together with the exhibits attached to such affidavits, in evidence.

It is unnecessary to encumber this record, of course, to ask the court to take judicial notice of the records and files in this cause, including the testimony and the exhibits and the previous orders and findings of this court, and I don't think it is necessary to do so, but we ask that those be taken into judicial account in passing on the sufficiency of this bill. The bill, Your Honor, that is the sum of our evidence. \* \* \*

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[fol. 142] (Leave granted to file Amendment to Supplemental and Ancillary Bill; Motion for Preliminary Injunction submitted.)

On the 28th day of September, 1939, the above cause came before the Court in open session at Cedar Rapids pursuant to the assignment therefor, upon the motion of the defendant Iowa-Wisconsin Bridge Company for a preliminary injunction and upon the resistance thereto by Phoenix Finance Corporation, Complainant; thereupon Vernon L. Grant, Esquire, is appointed shorthand reporter for the hearing and is sworn to completely and truthfully report and transcribe the testimony offered at the hearing; the defendant Iowa-Wisconsin Bridge Company appears by F. A. Ontjes, Esquire, and W. C. Green, Esquire, its counsel, and the complainant, Phoenix Finance Corporation, appears by Casper Schenk, Esquire, James R. Morford, Esquire, and H. W. Norman, Esquire, its counsel; thereupon evidence is offered by the defendant and by the intervener, and the motion and resistance thereto are argued by counsel, and the defendant, Iowa-Wisconsin Bridge Company, on its motion is granted leave to file amendment to supplemental and ancillary bill of complaint, which said amendment is forthwith filed; thereupon It is Ordered that the Phoenix Finance Corporation shall file its answer to the supplemental and ancillary bill of complaint and the amendment thereto within ten days from this date; thereupon said motion and resistance thereto are fully submitted and by the Court taken under advisement subject to filing of briefs by both sides within five days; and the reporter to have his transcript on file in five days.

Filed in the District Court September 28, 1939.

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[fol. 143] (Findings of Fact and Conclusions of Law of District Court on Motion for Preliminary Injunction.)

The above-entitled cause came on for hearing before the Court on the 28th day of September, 1939, it being the third day of the September 1939 Term of this Court at Cedar Rapids, Iowa, on the motion of the defendant Iowa-Wisconsin Bridge Company for a preliminary injunction; F. A. Ontjes and W. C. Green, appearing as attorneys for said Iowa-Wisconsin Bridge Company; and James R. Morford, and H. W. Norman and Casper Schenk, appearing as attorneys for the Phoenix Finance Corporation, one of the complainants; and said matter was heard upon the verified supplemental and ancillary bill of defendant and amendment thereto on file in the above-entitled cause, the exhibits and papers referred to in said supplemental and ancillary bill, and joint affidavit of F. A. Ontjes and W. C. Green, all the records and files in the above-entitled action on the part of said defendant; and upon the resistance on part of said complainant Phoenix Finance Corporation;

Now after having heard counsel, the Court being fully advised in the premises makes the following Findings of Facts:

One.

The Court finds that notice of motion for leave to file supplemental and ancillary bill in this cause dated September 11th, 1939, was duly served on the complainant Phoenix Finance Corporation by service of said notice, with copy of said supplemental and ancillary bill attached, on Casper Schenk, resident agent of said corporation in the State of Iowa, and upon said Casper Schenk as attorney of record for said corporation, on the 12th day of September, 1939, for hearing of said motion on the 18th day of September, 1939, at 3 o'clock P. M., before this Court in the United States Court Room at Waterloo, Iowa.

[fol. 144]

Two.

That on the 18th day of September, 1939, at 3 o'clock P. M. said motion came on for hearing, and on said date an order was entered, this Court granting leave to the said defendant to file said supplemental and ancillary bill; that

on said day, said defendant filed an application and motion for preliminary injunction, and this Court entered on order that said application and motion be heard before this Court in the United States Court Room in the City of Cedar Rapids, State of Iowa, on the 28th day of September, 1939, at 2 o'clock P. M., and that ten days' notice of such order be served on the Phoenix Finance Corporation by service of the same on Casper Schenk as its resident agent and as its attorney of record; that such notice was served on the 18th day of September, 1939 on the complainant Phoenix Finance Corporation as directed in said order, at Waterloo, Iowa.

### Three.

That the above entitled cause was commenced by the Bechtel Trust Company (now First Trust & Savings Bank) and A. H. Schubert as trustees on an alleged deed of trust and bonds at the request and instigation of the complainant Phoenix Finance Corporation against the Iowa-Wisconsin Bridge Company and that a receiver was appointed of all the property of the bridge company and that thereafter petitions of intervention were filed by the above named interveners with leave and by order of court to defend said action; and the Phoenix Finance Corporation made a party complainant by order of court; and that said cause was heard and decree rendered as hereinafter set forth.

### Four.

That on the 1st day of December 1936 the court filed its opinion and findings of fact and final decree, which was entered of record. That by said final decree all matters and differences between the complainant Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc. on the one hand and the defendant Iowa-Wisconsin Bridge Company on the other, were fully settled, adjudicated and determined, and that since the entry of said decree there have been no business transactions whatsoever between said defendant Iowa-Wisconsin Bridge Company and said complainant Phoenix Finance Corporation or its predecessor.

[fol. 145]

Five.

That following the entry of the decree aforesaid the complainant Phoenix Finance Corporation filed a petition for rehearing and prayed in the alternative that the decree be modified so as to withhold from adjudication the question of the validity of the \$50,000 mortgage dated March 10, 1931, by permitting Phoenix Finance Corporation to institute an action at law against the bridge company if it so desired, for money had and received and that there be reinvested in said Phoenix Finance Corporation 517 shares of "A" stock surrendered in exchange for bonds. That the petition for rehearing and for modification of the decree were denied.

Six.

That appeal from the said decree, orders, rulings and adjudication of this Court was taken to the Circuit Court of Appeals of the Eighth Circuit by the above-named complainants, where the same was affirmed. That petition for Writ of Certiorari to the Supreme Court of the United States was denied and the mandate of the Circuit Court of Appeals was issued on the third day of April, 1939, and on the 6th day of April, 1939, was filed and entered in the office of the Clerk of this Court.

Seven.

That the above entitled action was commenced about the 28th day of August, 1933. That a large number of depositions were taken which involved a great deal of time, very voluminous transcripts, hundreds of exhibits; the trial of this cause before the Master involved a number of weeks and at the said trial a large amount of additional oral testimony was taken; that the hearing before this court on exceptions involved months of work and that the hearing before this court to settle the record and of this cause before the Circuit Court of Appeals involved many weeks of additional work; that this cause was defended against the unjust claims of the Phoenix Finance Corporation at great expense to the bridge company and in said action various claims of the Phoenix Finance Corporation were fully heard and adjudicated; that to re-litigate the matters determined, piecemeal or otherwise would subject the



bridge company to great expense and impair its credit and business to its irreparable injury.

[fol. 146]

Eight.

That notwithstanding the final adjudication and order of the District Court of the United States for the Northern District of Iowa, the complainant, Phoenix Finance Corporation is disregarding said adjudication and order, and for the purpose of attempting to invalidate and nullify the lawful decree and order of this Court and for the purpose of depriving the defendant of the fruits of said adjudication and for the purpose of harassing, vexing and annoying and destroying the business of the defendant, has commenced and is prosecuting and is about to prosecute in the State of Delaware numerous and divers suits and actions involving the same matters fully and finally determined by this Court, and has further and in contempt of this Court filed for record and recorded the \$50,000 mortgage hereinbefore and hereinafter referred to held by this Court to be fraudulent and invalid.

Nine.

That the Phoenix Finance Corporation has commenced and is prosecuting the following suits against the said defendant:

a. Said Phoenix Finance Corporation filed an action entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware in the Superior Court of the State of Delaware in and for New Castle County, being case No. 39 November Term, 1938, the summons of said action being dated September 29, 1938, and the alleged cause of action being based on two certain alleged promissory notes, one of \$2000 dated December 15, 1932; and one of \$3125 dated January 20, 1933, which were involved in the above entitled cause and the adjudication thereof; that in this cause it was claimed that said notes and the alleged considerations thereof formed part of the consideration for the issuance of \$20,100 of the bonds involved in this action. That this Court found that the said bonds were fraudulently issued

and wholly without consideration and were more than offset by indebtedness of Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc., to this defendant, Iowa-Wisconsin Bridge Company. That in said cause in Delaware the defendant, Iowa-Wisconsin Bridge Company [fol. 147] interposed the defense of res judicata and other defenses,—such as want of consideration. That said cause was tried on the issue raised by the plea of res judicata, but has not yet been determined by the Delaware Court.

b. That on or about the 20th day of February, 1939, the said Phoenix Finance Corporation commenced an action in the Court of Chancery of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation of the State of Delaware, plaintiff versus Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, defendant, and caused subpoena to be issued therein and served on said defendant and filed bill of complaint on February 18th, 1939, asking to recover 517 shares of Class "A" stock of the Iowa-Wisconsin Bridge Company, which was surrendered and cancelled at the time said Phoenix Finance Corporation fraudulently procured the issuance of \$60,500 of bonds involved in and as found in this action, and which stock this court and the Circuit Court of Appeals ordered, adjudged and found the said Phoenix Finance Corporation was not entitled to have re-issued to it. That the defendant has answered in said cause, but that said cause has not been tried.

c. That the said Phoenix Finance Corporation has commenced an action in the Superior Court of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company duly organized and existing under the laws of the State of Delaware, being Case No. 65, September Term, 1939, and has caused summons to be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware, on the 18th day of September next, to answer said Phoenix Finance Corporation of a plea of trespass on the case, etc.; that said summons was caused to be issued on the 22nd day of June, 1939, and served on

the defendant. That the alleged cause of action in said suit is based upon an alleged promissory note of \$500.00 dated December 31, 1932, an alleged promissory note for \$12,110.19 dated July 7, 1933, an alleged claim for \$15,000 for money claimed to have been lent and advanced by defendant to plaintiff in that case and upon an alleged claim for \$7000.00 claimed to have been for money due and payable from the defendant to the plaintiff in that case, Phoenix Finance Corporation, for interest and forbearance. That the said alleged promissory notes of \$500.00 and \$12,110.19 [fol. 148] were involved in the above entitled cause and the adjudication thereof; that in this cause it was claimed that said notes and the alleged considerations therefor formed part of the consideration for the issuance of \$20,100 of bonds involved in this action. That this court found that the said bonds were fraudulently issued and wholly without consideration and were more than offset by indebtedness of Phoenix Finance Corporation and its predecessor, Phoenix Finance System, Inc., to this defendant, Iowa-Wisconsin Bridge Company. That as to the alleged claim for \$15,000.00 this a mere re-statement of the alleged cause of action on the notes aforesaid stated in different form and in the alternative and the alleged claim for \$7000.00 is merely a claim for interest on the notes aforesaid set forth in a different form and in the alternative. That all of said alleged claims were involved in and adjudicated in the above-entitled cause in this Court.

d. That the said Phoenix Finance Corporation commenced another action in the Superior Court of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, duly organized and existing under the laws of the State of Delaware, being case No. 64, September Term, 1939, and caused summons to be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware, on the 18th day of September next to answer said Phoenix Finance Corporation of a plea "that it hold and keep with it the covenant between them made according to the force and effect of said articles of agreement between them, etc." That the said Phoenix Finance Corporation caused said summons to be issued on the 22nd day

of June, 1939, and caused the same to be served on the defendant. That the alleged cause of action in said suit is based on an alleged agreement claimed to have been entered into between Phoenix Finance System, Inc., John W. Shaffer & Company, and Iowa-Wisconsin Bridge Company dated November 10, 1930, under and by virtue of which said Phoenix Finance Corporation claims defendant became indebted to Phoenix Finance System, Inc. in the sum of \$21,262.71, claims to be the assignee of said Phoenix Finance System, [fol. 149] Inc. and claims the total sum of \$50,000.00 for principal and interest; that attached to the declaration in said case is a copy of said purported agreement. That said agreement so referred to in said declaration and sued upon is the same agreement described and referred to by this court in its finding of fact #24, appearing at pages 13, 14 and 15 of Exhibit B attached to the Supplemental and Ancillary Bill of Complaint, which the Court found to be without consideration, a fraud upon the bridge company, void and ultra vires.

e. That the said Phoenix Finance Corporation commenced another action in the Superior Court of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a Corporation duly organized and existing under the laws of the State of Delaware versus the Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, being case No. 79, September Term, 1939, and caused summons to be issued against said Iowa-Wisconsin Bridge Company returnable at Wilmington, Delaware, on the 18th day of September next to answer said Phoenix Finance Corporation of a plea of trespass on the case, etc. That said Phoenix Finance Corporation caused said summons to be issued on the 11th day of July, 1939, and served on the defendant. That the alleged cause of action in said suit is based on certain of the bonds which were involved in the above-entitled action, to-wit: one Series B Bond No. 93 in the face amount of \$500.00; one Series B. Bond No. 97 in the face amount of \$500.00. That this Court in its final decree, adjudged and held that all bonds held by Phoenix Finance Corporation were invalid, fraudulent and issued without consideration, and that this Court found certain bonds which had been issued to Helmer Anderson in the total amount of

\$7400.00 to be valid to the extent of \$6000.00 only, and directed that said sum of \$6000.00 be paid from income of the bridge company; that said Series B. Bonds Nos. 93 and 97, upon which suit has been commenced in the State of Delaware as hereinbefore set forth, are portions of the \$7400.00 of the bonds issued to Helmer Anderson and allowed in part by this Court as aforesaid.

Addendum to subdivision (e) of Finding Nine: That sixty-seventy fourths (60 74) of the face value of said bonds with accrued interest to May 1, 1939, has been available since May 1, 1939, and will be paid to the lawful holder of said bonds by the Receiver of this Court on surrender of [fol. 150] said bonds.

f. That all ultimate facts and [issued] involved and presented in each of the actions now pending in the Court of the State of Delaware and brought by the Phoenix Finance Corporation against the Iowa-Wisconsin Bridge Company and specified or referred to in the Supplemental and Ancillary Bill of Complaint as amended of the Iowa-Wisconsin Bridge Company, were within the issues involved and were fully considered and determined by the Trial Court in its original Final Decree, which Decree was affirmed by the Circuit Court of Appeals of the Eighth Circuit, Cause No. 159, September Term, 1939, in the Superior Court of the State of Delaware in and for New Castle County, involving alleged toll tickets, and defenses thereto, are excepted herefrom.

#### Ten.

That John A. Thompson who was found by this Court in this cause as controlling the Phoenix Finance Corporation while dominating and controlling the bridge company in a fraudulent scheme, plan and conspiracy to cheat and defraud the bridge company and its stockholders, as president of the Phoenix Finance Corporation asserted about December 6, 1938, since the rendition of this Court's decisions and the decision of the Circuit Court of Appeals and the United States Supreme Court in this cause, that the litigation involved in this action was not ended and would not be ended for a good many years. That on the 8th day of July, 1939, as president of the Phoenix Finance Corporation, said

Thompson further asserted that one case had been tried in the Courts of Delaware in June, 1939; that the thing, referring to the matters involved in this case, was not over, and that there were six cases in the State of Delaware that would be carried on in the course of the next few months.

### Eleven.

That said John A. Thompson on the 23rd day of November, 1938, wrote the stockholders of the Iowa-Wisconsin Bridge Company: "I am not asking you or any other man to help me or to help Phoenix; Phoenix does not need any help in its fight to maintain its creditor position. In the end the facts will all be proved in competent courts, I am not a bit disturbed about the final outcome," etc.

[fol. 151] That on the 12th day of June, 1939, the said John A. Thompson, president of the Phoenix Finance Corporation wrote to a stockholder and director of the Iowa-Wisconsin Bridge Company:

"Now Phoenix claimed outright ownership of \$97,000 and \$60,500 or a total of \$157,000 of Bridge bonds. The \$60,500 were bonds received in connection with the retirement of 517 shares of preferred stock which was unquestionably owned and paid for by Phoenix, so if the bonds were no good, certainly the Bridge Company must return the 517 shares of preferred stock to Phoenix. A suit is now pending in Delaware to enforce the Bridge Company to do that which it should in fairness and honesty do without a law suit, and there is not the slightest doubt that the Delaware Courts will make the Bridge Company make good on the \$60,500 of bonds or return the 517 shares of preferred stock. So while this law suit may have resulted in the elimination of the \$60,500 of bonds as a bonded debt, that was not a gain of \$60,500 to the Bridge Company by any means.

"As to the \$97,000 worth of bonds, even if the mortgage deed of trust had been adjudicated and eliminated, and it is still shown that the Bridge Company owes the \$97,000 for legitimate borrowings, it makes little difference whether the Bridge Company pays the debt by reason of a mortgage foreclosure or by way of a judgment and execution against the Bridge.



"We have to this point accounted for \$22,400 of bonds in the hands of third parties, eliminated by legitimate retirement of the full amount owing thereon, and \$157,500 worth of bonds, the collection of which has been temporarily stayed, making a total of \$179,000 and leaving \$20,100 yet to be accounted for.

"These \$20,100 of bonds were pledged as collateral against Bridge Company notes for borrowed money, totaling \$17,735.19. Suits are now pending on these notes in the Delaware courts, and there is not the slightest chance that they will not be collected, because here Phoenix will have opportunity to present its evidence, which was never done in any of the proceedings in Federal Court, and could not properly be done because Phoenix and the Bridge Company, both being Delaware corporations, could not carry on as [fol. 152] proper parties with adverse interests in a Federal Court proceeding, as you well know."

That all of said matters were involved in this cause and determined by this court's decisions.

#### Twelve.

That on June 2, 1939, the said John A. Thompson and Phoenix Finance Corporation caused to be recorded in the office of the County Recorder in Book L pages 625-626 of Allamakee County, Iowa, an alleged mortgage of the Iowa-Wisconsin Bridge Company to the Phoenix Finance System, Inc., in the sum of \$50,000 dated March 10, 1931, which this court in this cause found to be without consideration, fraudulent and void, issued as a part of a scheme, plan and conspiracy to cheat and defraud the bridge company and its stockholders. That by the recording of said alleged mortgage said Phoenix Finance Corporation has wrongfully cast a cloud upon the title of the defendant to its property and has attempted to render null and void that portion of the findings and decree and order of this Court finally determining the invalidity of said mortgage.

#### Thirteen.

That the complainant Phoenix Finance Corporation as hereinbefore set forth in threatening to and unless re-

strained by this Court will proceed to institute and prosecute actions as aforesaid and will permit to remain on record the invalid \$50,000 mortgage aforesaid; that unless said complainant Phoenix Finance Corporation is restrained by this Court as herein prayed the defendant will be deprived of the fruits and advantages of the judgment, decree and orders of this Court in this cause and said complainant will continue with vexatious suits in utter disregard thereof; that the acts of said Phoenix Finance Corporation will cast a cloud over defendant's title and franchise because of a multiplicity of vexatious suits brought and to be brought against defendant and it will be damaged in a way that cannot be repaired or estimated at common law, and from these threatened wrongs the defendant has no remedy at common law but the only remedy is in equity.

[fol. 153] The foregoing Findings as requested by the Iowa-Wisconsin Bridge Company, are allowed and found with the Addendum to subdivision (e) of Finding Nine, added on the Court's motion; and subdivision (f) of Finding Nine, added on the Court's motion.

Dated this 7th day of October, 1939.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court October 7, 1939.

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[fol. 154]                      Conclusions of Law.

Upon the facts found the Court concludes as matter of Law:

1. That all issues and ultimate facts litigated, or which under the issues joined opportunity was offered for litigation, upon the trial under the original bill of complaint as amended, were adjudicated on the entry of the final judgment and decree in the original case.

2. That all ultimate facts and issues involved and presented in each of the actions now pending in the State of Delaware and brought by the Phoenix Finance Corporation against the Iowa-Wisconsin Bridge Company, were within the issues and involved in considering the validity of the issue of bonds, the legality of which was in controversy on

the trial of the original case, and were adjudicated by the final decree entered in the original case. Cause No. 159, September Term, 1939, in the Superior Court of the State of Delaware in and for New Castle County, involving alleged toll tickets and defenses thereto, are excepted herefrom.

3. That upon the showing and proofs contained in the Iowa-Wisconsin Bridge Company's supplemental verified bill of complaint and supporting papers verified and submitted therewith, and upon the hearing the Iowa-Wisconsin Bridge Company is entitled to a preliminary injunction restraining the Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys, and all those persons in active concert or participation with them who receive actual notice of the Order by personal service or otherwise, from instituting, prosecuting or continuing the prosecution of any and all actions in any court in the State of Delaware or elsewhere drawing in question any of the facts or issues presented in any of the cases now pending [fol. 155] in the State of Delaware, or drawing in question any of the ultimate facts and issues adjudicated by the final decree entered on the trial of the original case. Cause No. 159, September Term, 1939, in the Superior Court of the State of Delaware in and for New Castle County, involving alleged toll tickets and defenses thereto, are excepted herefrom.

4. That the hearing had on the 28th day of September, 1939, at the United States Court Room in Cedar Rapids, Iowa, in the Cedar Rapids Division of this District, upon the Iowa-Wisconsin Bridge Company's application for preliminary injunction, was had upon adequate and reasonable notice prescribed by this Court and given the Phoenix Finance Corporation by personal service on its authorized agent within this District, on the 18th day of this present month of September, 1939.

The foregoing Conclusions of Law are found by the Court this 7th day of October, 1939.

GEO. C. SCOTT,

United States District Judge.

Filed in the District Court October 7, 1939.

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[fol. 156] (Order Granting Preliminary Injunction, etc.,  
October 7, 1939.)

In the District Court of the United States for the Northern  
District of Iowa, Eastern Division.

First Trust & Savings Bank, (formerly Bechtel Trust Com-  
pany) and A. H. Schubert, as Trustees and Phoenix  
Finance Corporation, Complainants,

No. 220. vs. Equity.

Iowa-Wisconsin Bridge Company, a corporation,  
Defendant,

Fayette D. Kendrick, Warrea G. Hayes, Anna W. Schuster,  
T. H. Bakewell and Ernest W. Haveland, Interven-  
ers.

This cause came on to be heard the 28th day of Septem-  
ber, 1939, at a regular term of this Court at Cedar Rapids,  
Iowa, on the motion of Iowa-Wisconsin Bridge Company,  
defendant, in said action, for a preliminary injunction, pur-  
suant to notice duly given as required by law and by the  
order of this Court.

Said motion was heard upon defendant's verified Sup-  
plemental and Ancillary Bill of Complaint and the exhibits  
attached thereto, the joint affidavit of Fred A. Ontjes and  
Wm. C. Green, verified September 28, 1939, the amend-  
ments to the Supplemental and Ancillary Bill of Complaint  
and all the records and files in the above entitled action, on  
the part of defendant, and upon resistance on the part of  
the complainant, Phoenix Finance Corporation.

After hearing counsel for the respective parties, and due  
consideration of the matter, and the Court having made its  
Findings of Fact and Conclusions of Law, it appearing to  
the Court that the issuance of a preliminary injunction is  
necessary to prevent immediate and irreparable damage,  
for the reasons following:

[fol. 157] That the above entitled cause was commenced  
by the trustee complainants at the request and instigation  
of the complainant Phoenix Finance Corporation against  
the defendant; that thereafter Phoenix Finance Corpora-  
tion was made a party complainant by order of the Court  
and said action was prosecuted under the direction of said

complainant Phoenix Finance Corporation; that on the first day of December, 1936, this court filed its opinion and findings of fact and final decree by which all matters and differences between said complainant Phoenix Finance Corporation and its predecessor Phoenix Finance System, Inc., on the one hand and the defendant Iowa-Wisconsin Bridge Company on the other were fully settled, adjudicated and determined. That following the entry of the decree aforesaid said Phoenix Finance Corporation filed a petition for rehearing with a prayer in the alternative that the decree be modified so as to withhold from adjudication the question of the validity of the \$50,000.00 mortgage dated March 10, 1931, by permitting Phoenix Finance Corporation to institute an action at law against the bridge company if it so desired, for money had and received and that there be reinvested in said Phoenix Finance Corporation 517 shares of Class A stock surrendered in exchange for bonds, which petition for rehearing and petition for modification of decree were denied, this court having found that the stock in question was cancelled when the bonds in question were fraudulently obtained by Phoenix Finance Corporation and having denied the petition for rehearing and motion for modification of the decree and refused to order the reissuance of the stock to Phoenix Finance Corporation.

That thereafter an appeal from said decree, orders, rulings and adjudication was taken to the Circuit Court of Appeals of the Eighth Circuit by the complainants, including Phoenix Finance Corporation, where the same was affirmed. That thereafter a petition for writ of certiorari to the Supreme Court of the United States by said complainants was denied and the mandate of the Circuit Court of Appeals issued on the third day of April, 1939, and on the [fol. 158] 6th day of April, 1939, filed and entered in the office of the Clerk of this Court.

That the above entitled action was commenced about the 28th day of August, 1933. That a large number of depositions were taken which involved a great deal of time; that there were very voluminous transcripts and [hundred] of exhibits; that the trial on which a large amount of additional oral testimony was taken involved a number of

weeks; that the hearing before this court on exceptions involved months of work; and that this cause was defended against the unjust claims of Phoenix Finance Corporation at great expense to the defendant bridge company and that since in the said action the various claims of Phoenix Finance Corporation were fully heard and adjudicated to relitigate the matters determined, piece-meal or otherwise, would subject the bridge company to great expense, and impair its credit and business to its irreparable injury. That notwithstanding the final adjudication and order of this court, the complainant Phoenix Finance Corporation, disregarding said adjudication and order and for the purpose of attempting to invalidate and nullify the lawful decree and order of this court, and for the purpose of depriving the defendant Iowa-Wisconsin Bridge Company of the fruits of said adjudication and for the purpose of harassing, vexing and annoying and destroying the business of said defendant, has commenced and is prosecuting and is about to prosecute in the courts of the State of Delaware numerous suits and actions involving the same matters fully and finally determined by this court and especially that it has commenced and is prosecuting the following actions:

(a) One to recover on two certain alleged promissory notes, one of \$2,000.00. dated December 15, 1932 and one of \$3,125. dated January 20, 1933, which were involved in this cause, and the adjudication thereof, it having been claimed that said notes and the alleged considerations thereof formed part of the consideration for the issuance of \$20,100. of bonds involved in this action, which bonds this court found were fraudulently issued and wholly without [fol. 159] consideration and more than offset by indebtedness of Phoenix Finance Corporation and its predecessor Phoenix Finance System, Inc. to the defendant, Iowa-Wisconsin Bridge Company.

(b) One to recover 517 shares of Class A stock of the Iowa-Wisconsin Bridge Company surrendered and cancelled at the time Phoenix Finance Corporation fraudulently procured the issuance of \$60,500. of bonds involved in this action, which stock this court and the Circuit Court of Appeals ordered, adjudged and found said Phoenix Finance Corporation was not entitled to have reissued to it.



(c) One to recover upon an alleged promissory note of \$500. dated December 31, 1932, and an alleged promissory note for \$12,110.19, dated July 7, 1933, said claims being repeated as an alleged claim for \$15,000. for money claimed to have been lent and advanced and an alleged claim for \$7,000. claimed for interest; both of said alleged promissory notes having been involved in the above entitled cause and adjudication thereof, and this court having found that said notes and the alleged considerations therefor formed part of the consideration for the issuance of \$20,100. of bonds involved in this action, and that said bonds were fraudulently issued and wholly without consideration and more than offset by indebtedness of Phoenix Finance Corporation and its predecessor Phoenix Finance System, Inc. to this defendant Iowa-Wisconsin Bridge Company.

(d) One on an alleged guaranty agreement claimed to have been entered into between Phoenix Finance System, Inc., J. W. Shaffer and Company and Iowa-Wisconsin Bridge Company dated November 10, 1930, under and by virtue of which said Phoenix Finance Corporation claims defendant became indebted to Phoenix Finance System, Inc. in the sum of \$21,262.71, which said agreement was fully adjudicated and passed upon by this court and found to be without consideration, fraudulent, void and ultra vires.

(e) One to recover upon one Series B Bond No. 93 in the face amount of \$500. and one Series B Bond No. 97 in the face amount of \$500., which were part of the bonds directly involved in this action, being a part of a certain [fol. 160] group of bonds issued to one Helmer Anderson in the total amount of \$7,400., which this Court found to be valid to the extent of \$6,000. only, this Court having directed that said sum of \$6,000. be paid from income of the Bridge Company. That sixty/seventy-fourths (60/74) of the face value of said bonds with accrued interest to May 1, 1939, has been available since May 1, 1939, and will be paid to the lawful holder of said bonds by the Receiver of this Court on surrender of said bonds.

(f) That all ultimate facts and issues involved and presented in each of the actions now pending in the Court of the State of Delaware and brought by the Phoenix Finance

Corporation against the Iowa-Wisconsin Bridge Company and specified or referred to in the Supplemental and Ancillary Bill of Complaint as amended of the Iowa-Wisconsin Bridge Company, were within the issues and involved and were fully considered and determined by the Trial Court in its original Final Decree, which Decree was affirmed by the Circuit Court of Appeals of the Eighth Circuit. Cause No. 159, September Term, 1939, in the Superior Court of the State of Delaware in and for New Castle County involving alleged toll tickets and defenses thereto, are excepted herefrom.

That on June 2, 1939, John A. Thompson and Phoenix Finance Corporation caused to be recorded in the office of the County Recorder of Allamakee County in Book L, pages 625-626, an alleged mortgage of the Iowa-Wisconsin Bridge Company to Phoenix Finance System, Inc., in the sum of \$50,000. dated March 10, 1931, which this court in this cause found to be without consideration, fraudulent and void, issued as a part of a scheme, plan and conspiracy to cheat and defraud the bridge company and its stockholders and by the recording of said alleged mortgage said Phoenix Finance Corporation has wrongfully cast a cloud upon the title of this defendant to its property and has attempted to render null and void that portion of the decree and order of this court finally determining the invalidity of said mortgage.

[fol. 161] That the complainant Phoenix Finance Corporation is threatening to and unless restrained by this court will proceed to institute and prosecute actions as aforesaid and will permit to remain upon the record the invalid \$50,000. mortgage aforesaid, and that unless said complainant Phoenix Finance Corporation is restrained by this court the defendant Iowa-Wisconsin Bridge Company will be deprived of the fruits and advantages of the judgment, decree and orders of this court in this cause, and said complainant Phoenix Finance Corporation will continue with vexatious suits in utter disregard thereof and that the acts of said Phoenix Finance Corporation will cast a cloud over defendant's franchises because of a multiplicity of vexatious suits brought and to be brought against defendant, and it will be damaged in a way that cannot be repaired or estimated at common law, and from these threatened

wrongs said defendant Iowa-Wisconsin Bridge Company has no remedy at common law, but the only remedy is in equity,

Now, Therefore, It Is Ordered, Adjudged And Decreed that a preliminary injunction be and it hereby is granted defendant Iowa-Wisconsin Bridge Company against the complainant Phoenix Finance Corporation, and its officers, agents, servants, employees and attorneys, and all those acting by or through or for it or them, and its successors and assignees, and enjoining and restraining it and them, jointly and severally, until the further order of this court from in any wise further proceeding, conducting or carrying forward in any manner whatsoever, or causing, procuring or suffering to be conducted or carried forward, in any manner whatsoever, any and all steps, motions or proceedings in the following actions or suits heretofore brought, instituted and commenced by said Phoenix Finance Corporation, complainant herein, against the above named Iowa-Wisconsin Bridge Company, defendant herein, in the courts of the State of Delaware, to-wit:

[fol. 162] (a) The action commenced in the Superior Court of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, the summons in said action being dated September 29, 1938, and the cause being Number 39, November Term, 1938.

(b) The action commenced in the court of Chancery of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation of the State of Delaware, Plaintiff versus Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, defendant, the bill of complaint having been filed February 18, 1939.

(c) The action commenced in the Superior Court of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware

versus Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, the summons in which was issued on the 22nd day of June, 1939, being cause number 65, September Term, 1939.

(d) The action commenced in the Superior Court of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, summons in which was issued on June 22, 1939, being case number 64, September Term, 1939.

(e) The action commenced in the Superior Court of the State of Delaware in and for New Castle County entitled Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware versus Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of [fol. 163] Delaware, in which summons was issued on the 11th day of July, 1939, being case No. 79, September Term, 1939.

It is further Ordered, Adjudged And Decreed that the said Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys, and all those acting by or through or for it or them and its successors and assignees, be, and it and they are jointly and severally enjoined and restrained until the further order of this court from instituting, bringing, commencing or continuing any and all further actions or suits founded or based upon claims of said Phoenix Finance Corporation against said defendant Iowa-Wisconsin Bridge Company, concerning which findings were made by this court in this action or which were determined by this court in its order denying petition for rehearing and motion for a modification of decree by said Phoenix Finance Corporation, or which were determined by the Circuit Court of Appeals of the United States for the Eighth Circuit upon the appeal of said Phoenix Finance Corporation, and particularly those matters and

things which are set forth and referred to in the Supplemental and Ancillary Bill heretofore filed in this [suit].

It is further Ordered, Adjudged and Decreed that said Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys, and all those acting by or through or for it or them and its successors and assignees be and they are jointly and severally commanded and ordered forthwith to satisfy, release, discharge and remove from the records of the Recorder's office in Allamakee County, Iowa, that certain mortgage executed by Iowa-Wisconsin Bridge Company to Phoenix Finance System, Inc., dated March 10, 1931, recorded in the office of said County Recorder of said Allamakee County, Iowa, on the second day of June, 1939, in Book L, at pages 625-626, covering property and assets of said Iowa-Wisconsin Bridge Company and that they deliver the original of said mortgage to this court to be by it held until the final determination upon the Supplemental and Ancillary Bill filed by the defendant herein.

[fol. 164] It is further Ordered that defendant Iowa-Wisconsin Bridge Company forthwith give a bond in the sum of \$2,000. conditioned in conformity with the Rules of Civil Procedure, but without surety and that in lieu of a surety, \$2,000.00 of the funds in the possession of the Receiver be by the Receiver paid to the Clerk of this Court and by the Clerk carried into the Registry of the Court to secure said bond. And that this preliminary injunction remain in full force and effect until final hearing of this cause and until further order of this Court.

It appearing to the Court that the complainant Phoenix Finance Corporation is a corporation organized and existing under the laws of the State of Delaware, that it is permitted to do business in the State of Iowa and that Casper Schenk, Esq., is its resident agent in Iowa, it is Ordered that this injunction be served on the complainant by service of the same upon the said Casper Schenk as resident agent and that it be served upon Casper Schenk as Attorney for the Company.

It is further Ordered that copies of this Order, duly attested by the Clerk of this Court under the seal of the

Court, be served in lieu of the ordinary writ of preliminary injunction with the same force and effect.

Dated this 7th day of October, 1939.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court October 7, 1939.

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[fol. 165] (Order directing Receiver to deposit with Clerk certain Money to secure Condition of Preliminary Injunction Bond.)

An Order for Preliminary Injunction on Supplemental Complaint having this day been ordered upon conditions,

It is now further Ordered that the Receiver deposit out of funds in his hands with the Clerk of this Court \$2,000.00, to be deposited in the Registry to secure the condition of the preliminary injunction bond.

Done and Ordered this 7th day of October, 1939.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court October 7, 1939.

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[fol. 166] (Preliminary Injunction Bond.)

Know All Men By These Presents:

That the undersigned, Iowa-Wisconsin Bridge Company, a corporation organized under the laws of Delaware, defendant in the above entitled action, as principal, is held and firmly bound unto the Phoenix Finance Corporation complainant named in the above entitled action and its successors and assigns in the sum of \$2000.00, lawful money of the United States, to be paid to the said complainant, its successors or assigns, for which payment well and truly to be made, the said Iowa-Wisconsin Bridge Company binds itself firmly by these presents.

Sealed with its (Iowa-Wisconsin Bridge Company) seal and dated this ninth day of October 1939.



The condition of the above obligation is such that whereas the said Iowa-Wisconsin Bridge Company, defendant in the above entitled cause, has obtained from the District Court of the United States for the Northern District of Iowa, Eastern Division a preliminary injunction enjoining and commanding the said Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys as prayed for in Supplemental and Ancillary Bill of Complaint and as stated in said Order and Injunction in the above entitled cause, upon the condition that the said defendant, Iowa-Wisconsin Bridge Company, shall execute and file a bond in the sum of Two Thousand (\$2000.00) Dollars conditioned in conformity with the rules of Civil Procedure, but without surety, and that in lieu of surety, Two Thousand (\$2000.00) Dollars of the funds in the possession of the Receiver, be paid by the Receiver to the Clerk of this Court, and by the Clerk carried into the registry of the Court to secure said bond.

Now, if the above bounden defendant, Iowa-Wisconsin Bridge Company, shall well and truly pay all costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined, restrained or commanded by reason of said preliminary restraining and commanding order of injunction, should it hereafter [fol. 167] be dissolved or it be decided that said preliminary injunction was wrongfully obtained, then this obligation to be void, otherwise to remain in full force and virtue.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By H. A. Schremser,

President.

Attested:

Irene M. Bell,  
Secretary.

Filed in the District Court October 10, 1939.

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(Note by Clerk of the District Court—On October 10, 1939, there was paid into the Registry of the Court by the Receiver of Iowa-Wisconsin Bridge Company the sum of \$2000.00 as security for bond on preliminary injunction.)

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[fol. 168] (Motion of Phoenix Finance Corporation for  
Appointment of Auditor.)

Now comes Phoenix Finance Corporation and moves that the Court appoint as an auditor herein a certified public accountant or a firm of certified public accountants to be designated by the Court, to examine the accounts between Phoenix Finance Corporation, Phoenix Finance System, Inc., and Thompson & Company, hereinafter called the Phoenix Group, on the one hand, and Iowa-Wisconsin Bridge Company on the other hand, as shown by their respective bank accounts, bank statements, cancelled checks, books of account, vouchers, and other records, and to set forth the results of such examination so as to show in detail the cash receipts of the Bridge Company from, and its disbursements to, the Phoenix Group from November 1, 1930 to September 25, 1933, and such further matters with respect to the financial transactions of the Bridge Company as the Court may order.

In support of this motion Phoenix Finance Corporation submits herewith a verified statement prepared by a certified public accountant, based upon an examination of the [fol. 169] documents above enumerated, from which it appears that as at September 25, 1933 the cash receipts of the Bridge Company from the Phoenix Group exceeded its cash disbursements to the Phoenix Group by \$104,740.48.

And Phoenix Finance Corporation hereby agrees to make available to such auditor, at such time and place as such auditor may specify, the books of account, bank statements, cancelled checks, vouchers, and all other records of the Phoenix Group pertaining to transactions with Iowa-Wisconsin Bridge Company, and to authorize such auditor to examine the bank accounts of the Phoenix Group as shown by the books and records of the banks in which it has deposited its funds: and moves that the Court order Iowa-Wisconsin Bridge Company to make its books of account, bank statements, cancelled checks, vouchers, and other records and its bank accounts available to such auditor in like manner.

And Phoenix Finance Corporation hereby offers to deposit with the Clerk of this Court such amount, not exceeding \$2,000. as may be required to pay the compensa-

tion and expenses of such auditor, and agrees to leave to the discretion of the Court the question of the taxation of the amount so paid as costs in this suit.

**HAROLD W. NORMAN,**  
Attorneys for Appellant,  
Phoenix Finance Corporation.

**CASPER SCHENK,**  
917 Des Moines Building,  
Des Moines, Iowa.

**JAMES R. MORFORD,**  
829 Delaware Trust Building,  
Wilmington, Del.

**HAROLD W. NORMAN and**  
**EDWARD A. ZIMMERMAN,**  
**ZIMMERMAN & NORMAN,**  
111 West Monroe Street,  
Chicago, Illinois.

Filed in the District Court, November 2, 1939.

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[fol. 170] I have examined the records pertaining to cash receipts and disbursements of the Iowa-Wisconsin Bridge Company for the period dating from the time the original books of account were set up, November 1, 1930, to and including September 25, 1933, the latter date being the last business day prior to the appointment of a Receiver.

In checking the records of the cash receipts and disbursements of the Iowa-Wisconsin Bridge Company I found that it had received \$454,964.14 and had disbursed \$454,290.65, leaving a cash balance of \$673.49 at September 25, 1933.

I have classified all items, both receipts and disbursements, separating those coming from or going to the Phoenix Finance Corporation, Phoenix Finance System, Inc. and Thompson & Company (hereinafter referred to as the Phoenix group).

Included in the aforementioned cash receipts was the amount of \$318,141.85 as coming from the Phoenix group, and included in the aforementioned disbursements was the sum of \$213,401.37 disbursed to the Phoenix group, leav-

ing a net excess cash received from the Phoenix group in the sum of \$104,740.48.

GEORGE E. PREUSS.

State of Illinois,

County of Cook—ss.:

George E. Preuss, being first duly sworn, deposes and says that he is of lawful age; that he is a certified public accountant licensed under the laws of Illinois and having his residence in Chicago, Illinois; that the foregoing statement was prepared under his direction and supervision; that he is familiar with the contents thereof, and that the same is true and correct to the best of his knowledge and belief.

GEORGE E. PREUSS.

Subscribed and sworn to before me, a notary public in and for said County and State, this first day of November, 1939.

(Seal)

MABEL YOUNG,

Notary Public.

My Commission expires—July 12, 1942.

Filed in the District Court, November 2, 1939.

[fol. 171] (Notice of Hearing for Appointment of Auditor.)  
To F. A. Ontjes and W. C. Green, Attorneys for Iowa-Wisconsin Bridge Company:

You and each of you are hereby notified that Phoenix Finance Corporation will file its "Motion for Appointment of an Auditor" in the above entitled cause, a copy of which is hereto attached and made a part hereof, and that said Motion will come on for hearing and submission at Dubuque, Iowa, in the United States District Court Room, on November 7, 1939 or as soon thereafter as the same can be heard by the Court.

CASPER SCHENK,  
JAMES R. MORFORD,  
HAROLD W. NORMAN,  
(HAROLD W. NORMAN and  
EDWARD A. ZIMMERMAN,  
ZIMMERMAN and NORMAN),

Attorneys for Phoenix Finance Corporation.

We hereby accept service of the foregoing Notice and acknowledge receipt of a copy of the foregoing Notice and of the Motion for Appointment of an Auditor thereto attached, this ..... day of November, 1939.

Attorneys for Iowa-Wisconsin  
Bridge Company.

Filed in the District Court, November 2, 1940.

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[fol.172] (Order Modifying Order Granting Preliminary  
Injunction, November 6, 1939.)

Now on this 6th day of November, 1939, and the Court being held in the United States Court Room in Dubuque, Iowa, it coming to the attention of the Court that counsel for the Iowa-Wisconsin Bridge Company in preparing the Order signed and entered on October 7th, 1939, inadvertently included in the draft of said Order a mandatory provision relative to the \$50,000.00 mortgage referred to in the Supplemental and Ancillary Complaint, and the Court at the time of signing said Order having inadvertently overlooked such provision,

It Is Now On This Day Ordered and Decreed that the Order of October 7th, 1939, be and the same is hereby modified by deleting and eliminating the provisions of said Order and Interlocutory Decree commanding the release and Delivery of said mortgage and note secured thereby, reading as follows:

"It is further Ordered, Adjudged And Decreed that said Phoenix Finance Corporation, its officers, agents, servants, employees and attorneys, and all those acting by or through or for it or them and its successors and assignees be and [fol.173] they are jointly and severally commanded and ordered forthwith to satisfy, release, discharge and remove from the records of the Recorder's office in Allamakee County, Iowa, that certain mortgage executed by Iowa-Wisconsin Bridge Company to Phoenix Finance System, Inc., dated March 10, 1931, recorded in the office of said County Recorder of said Allamakee County, Iowa, on the second day of June, 1939, in Book L, at pages 625-626, covering

property and assets of said Iowa-Wisconsin Bridge Company and that they deliver the original of said mortgage to this court to be by it held until the final determination upon the Supplemental and Ancillary Bill filed by the defendant herein."

but nevertheless the Respondent Phoenix Finance Corporation and all persons representing or acting for it be and are hereby enjoined from either disposing of said mortgage or in any way attempting to enforce the same, pending the further Order of this Court.

Done and Ordered this 6th day of November, 1939.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, November 6, 1939.

[fol. 174] (Order Overruling Motion for Appointment of Auditor.)

On this 7th day of November, 1939, it being the regular November Motion Day of this Court, the Motion of the Phoenix Finance Corporation, Respondent, to the Iowa-Wisconsin Bridge Company's Supplemental Bill of Complaint as amended for Appointment of an Auditor coming on to be heard and considered, and the same having been submitted under local Rule 3, and the Court having considered the same,

It Is Ordered that said Motion be and it is hereby overruled, and the appointment of an auditor denied.

Done and Ordered this 7th day of November, 1939.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, November 7, 1939.

[fol. 175] (Answer and Counterclaim of Phoenix Finance Corporation.)

Phoenix Finance Corporation, a corporation organized and existing under the laws of the State of Delaware, hereinafter referred to as "Phoenix," defendant to the Sup-



plemental and Ancillary Bill as amended herein of the Iowa-Wisconsin Bridge Company, hereinafter referred to as "Bridge Company," answering the said bill, states as follows:

### First Defense.

1. Denies each and every allegation of paragraph 1 except that it admits that the above entitled cause was commenced by the said Trustees on a certain deed of trust and bonds at the formal request of Phoenix; that a receiver was appointed of all the property of the Bridge Company and that thereafter petitions of intervention were filed by the above named interveners with leave of Court, and that Phoenix was by order of Court made a party complainant, but alleges that by said order it was made a nominal complainant only, and alleges that this Court held:

[fol. 176] "I am of opinion that the trustees were the only indispensable parties plaintiff, had exclusive control of the litigation, and that the only effect of bringing in the Phoenix Finance Corporation was by admissions in testimony to establish the status of that corporation as the holder and owner of about ninety per cent of the bond issue."

and alleges that the said receivership was solely that incident to the foreclosure and not a general receivership.

2. Admits the first sentence of paragraph 2 and denies each and every allegation of the second sentence of paragraph 2.

3. Denies each and every allegation of paragraph 3, except that it admits that after the entry of the decree aforesaid, it filed a petition for rehearing, with an alternative prayer, but alleges that said alternative prayer was in words and figures as follows:

"Second. In case rehearing is denied, then as alternative relief that the decree be modified so as to withhold from adjudication the question of the validity of the \$50,000. mortgage given by the Bridge Company to petitioner, reserving the right to petitioner to litigate said mortgage in another action, if it so desires.

"Third. In case rehearing is denied, the decree be so modified as to re-vest in petitioner 517 shares of 'A' stock surrendered in exchange for bonds.

“Fourth. In case rehearing is denied, that the decree be modified so as to withhold from adjudication the right of petitioner to institute an action at law against the Bridge Company, if it so desires, for money had and received.”

and that it admits that the petition for rehearing and the alternative prayers were all denied by the order set forth in Exhibit D, and alleges that neither the decree nor the said order was any adjudication against Phoenix of the matters set forth in the alternative prayer.

4. Admits the allegations contained in paragraph 4.

5. Answering paragraph 5, admits all allegations concerning date of commencement, depositions, transcripts, exhibits, and trial before Master, except the length thereof [fol. 177] of, which appear in paragraph 5 prior to the allegation concerning work on exceptions, settling record, and appeal, and as to this allegation Phoenix states it is without knowledge or information sufficient to form a belief as to the truth thereof. Further answering, denies each and every allegation of paragraph 5 not herein expressly admitted.

6. Denies each and every allegation of paragraph 6, except that it admits that it has commenced and is prosecuting, and is about to prosecute, in the State of Delaware, the suit and actions hereinafter specifically described, save as restrained by the Preliminary Injunction issued by this Court, and admits that it has filed for record and recorded a \$50,000. mortgage from the Bridge Company to Phoenix Finance System, Inc.

7. Answering paragraph 7, admits that it has commenced and was prosecuting the following suits against the Bridge Company until the entry of the Preliminary Injunction herein by this Court:

(a) Admits that it filed the action described in paragraph 7(a), based on two promissory notes, one of \$2000. and one of \$3,125; admits that this Court set forth in its decree that the mortgage and bonds sought to be foreclosed were fraudulently issued and that the bonds were without valid consideration, with the exception of certain bonds aggregating \$15,000.; admits that in the said Delaware action the Bridge Company pleaded res judicata and other

defenses. such as want of consideration, and that the said cause was tried on the issue of res judicata but has not yet been determined by the Delaware Court, and alleges that all other defenses except res judicata were withdrawn by the Bridge Company prior to the submission of said cause. Further answering paragraph 7(a), Phoenix denies each [fol. 178] and every allegation thereof not herein expressly admitted.

(b) Admits that it commenced the action described in paragraph 7(b), seeking the delivery to Phoenix of a new certificate for 517 shares of Class A stock; admits that the certificate for these shares was delivered by Phoenix to the Bridge Company in connection with the issue of \$60,500. of bonds of the Bridge Company; admits that the Bridge Company answered in said cause in Delaware, and alleges that the Bridge Company has pleaded the defense of res judicata therein, and admits that the said cause has not been tried. Further answering, Phoenix denies each and every allegation of paragraph 7(b) not herein expressly admitted.

(c) Answering paragraph 7(c), admits the allegations thereof as contained in the original Supplemental and Ancillary Bill before amendment. As to the matters added by said amendment, Phoenix admits that said cause of action in Delaware is based upon promissory notes of \$500. and of \$12,110.19, dated as set forth in the amendment, and that said Delaware cause claimed \$7,000. as interest to July 1, 1939, and admits that the common counts in the sum of \$15,000. were also pleaded in said action. Admits that this Court in its decree set forth that the mortgage and bonds sought to be foreclosed were fraudulently issued and that all bonds, with the exception of certain bonds aggregating \$15,000., were without valid consideration. Further answering paragraph 7(c), Phoenix denies each and every allegation thereof not expressly herein admitted.

(d) Answering paragraph 7(d), Phoenix admits the allegations thereof contained in the Supplemental and Ancillary Bill before amendment, and admits the allegations contained in the first sentence of the paragraph added to paragraph 7(d) by amendment; admits that the agreement sued upon in said Delaware action is referred to

in Finding No. 24 of this Court. Further answering, Phoenix denies each and every allegation of paragraph 7(d) not herein expressly admitted.

(e) Answering paragraph 7(e), Phoenix admits the allegations thereof contained in the original Supplemental and Ancillary Bill before amendment; further answering Phoenix admits that its cause of action in Delaware was based upon two Series B bonds of the Bridge Company, numbered 93 and 97, in the face amount of \$500 each; admits that bonds in the total amount of \$7,400. originally issued to Helmer Anderson were allowed by this Court to the extent of \$6,000. and were directed to be paid from the income of the Bridge Company, and admits that said bonds numbered 93 and 97 constitute part of the bonds originally issued to Helmer Anderson by the Bridge Company. Further answering, Phoenix denies each and every allegation of paragraph 7(e) not herein expressly admitted.

[fol. 180] (f) Answering paragraph 7(f), Phoenix admits the allegations thereof contained in the original Supplemental and Ancillary Bill before amendment, and also admits the allegations contained in the first sentence of the matter added to paragraph 7(f) by the amendment, except that Phoenix denies that the claim in the said Delaware action is based on the purchase by Phoenix from the Bridge Company of the said toll bridge tickets, but states that said claim is based upon the purchase of the said toll bridge tickets by Thompson & Company for \$5,000. in cash from the Bridge Company, and that Phoenix subsequently purchased said toll tickets and paid a valuable consideration therefor; Phoenix denies each and every allegation of paragraph 7(f) not herein expressly admitted.

8. Denies each and every allegation of paragraph 8.

9. Denies each and every allegation of paragraph 9, except that it admits that on July 8, 1939, John A. Thompson did say that there were six cases pending in the State of Delaware that would be carried on in the course of the next few months.

10. Denies each and every allegation of paragraph 10, except that it admits that John A. Thompson on November 23, 1938 wrote a letter to the stockholders of the Bridge

Company, containing the substance of but not precisely the matter as it is purported to be quoted in the Supplemental and Ancillary Bill herein, and admits that on June 12, 1939 John A. Thompson wrote to a stockholder and director of the Bridge Company substantially, but not precisely, as quoted in paragraph 10 of the Supplemental and Ancillary Bill herein, and Phoenix offers to present true and correct copies of said letters at the trial hereof.

11. Denies each and every allegation of paragraph 11, except that it admits that on June 2, 1939 it caused to be [fol. 181] recorded in the office of the County Recorder, in Book L, pages 625-626 of the records of Allamakee County, Iowa, a certain mortgage executed by the Bridge Company to Phoenix Finance System, Inc., in the sum of \$50,000., dated March 10, 1931, and admits that this Court in its findings made reference to this mortgage, substantially as set forth in paragraph 11 of the Supplemental and Ancillary Bill herein.

12. Denies each and every allegation of paragraph 12, except that it admits that it intends to prosecute the actions hereinbefore described in paragraph 7 and proposes to permit to remain on record the \$50,000. mortgage above described, to the extent that it is not restrained by the preliminary injunction of this Court.

### Second Defense.

13. The bonds sued upon in the action described in paragraph 7(e) hereof were acquired by Phoenix as a holder in due course for value. On November 26, 1930 the Bridge Company sold a certain leasehold on property owned by it, for \$6,000., which leasehold was purchased by one Anderson from the owner thereof; subsequently, improvements consisting of valuable oil station equipment were placed thereon at the expense of said Anderson, and thereafter the Bridge Company purchased the said leasehold, together with the improvements which had been placed thereon, on March 7, 1931, for the aforesaid \$7,400. of bonds; prior to the filing of the foreclosure proceedings entitled as above, said Anderson sold all of the said bonds for valuable considerations to various persons, and thereafter, prior to the decree entered in the above entitled



cause, Phoenix purchased the said two bonds described in said paragraph 7(e) for a valuable consideration from holders in due course. No issue with respect to the right of Phoenix to recover on said bonds was or could have been adjudicated by the said decree of December 1, 1936.

[fol. 182]

#### Third Defense.

14. The Bridge Company has appeared generally in the courts of Delaware and submitted to their jurisdiction in each of the actions and the suit described in paragraph 7 of the Supplemental and Ancillary Bill herein and more fully shown by the copies of the statements of claim in such actions and suit attached to the Resistance of Motion for Preliminary Injunction heretofore filed by Phoenix in this Court, to which reference is hereby made for a complete statement thereof. The Bridge Company has pleaded the defense of res judicata in the action described in sub-paragraph (a) and the suit described in sub-paragraph (b) of said paragraph 7 and has the right to plead said defense in the remaining actions in Delaware. Said issue can be heard and determined in the Delaware courts, of which state both Phoenix and the Bridge Company are citizens and residents, and there is no occasion for the exercise of extraordinary relief by this Court as prayed in the Supplemental and Ancillary Bill. As to the cause of action set forth in said sub-paragraph (b), it relates to the management of the internal affairs of the Bridge Company, a Delaware corporation, and as such is exclusively within the purview of the chancery courts of the State of Delaware.

#### Fourth Defense.

15. The opinion, decree and findings of December 1, 1936 attached as exhibits to the Supplemental and Ancillary Bill herein were made and entered in a suit for foreclosure of a trust deed in which the only issue before this Court was the right of the plaintiff Trustees to a decree of foreclosure, and Phoenix hereby makes a part of this answer by reference the pleadings filed in said cause, to-wit: Bill of Complaint filed August 28, 1933, Answer thereto filed September 25, 1933, Amendment to said Answer filed December 8, 1933, Petition of Intervention filed December 5, 1933, Amendment to said Petition filed September 17,



1934, Complainant's Reply to Petition of Intervention filed [fol. 183] November 6, 1934, Answer of Phoenix to Petition of Intervention filed February 23, 1934, and Petition of Intervention filed May 6, 1935, and the Supplemental opinion and order of this Court entered January 5, 1937. No issue was presented to this Court with respect to the accounts between Phoenix or its predecessors in interest and the Bridge Company or as to any of the matters involved in the said litigation brought by Phoenix against the Bridge Company in the courts of Delaware, or as to the validity of the \$50,000. note and mortgage described in said Supplemental and Ancillary Bill.

#### Fifth Defense.

16. Phoenix, since the date of its incorporation, and Phoenix Finance System, Inc., and the Bridge Company since the commencement of said foreclosure proceedings, were and have continued to be to the date hereof corporations organized and existing under the laws of the State of Delaware and citizens thereof, and this Court has never had and does not now have any jurisdiction of any controversies between Phoenix or Phoenix Finance System, Inc., and the Bridge Company or as to any of the matters involved in the said litigation brought by Phoenix against the Bridge Company in the courts of Delaware, or as to the validity of the \$50,000. note and mortgage described in said Supplemental and Ancillary Bill.

#### Sixth Defense and Counterclaim.

Without waiving the defenses heretofore urged, Phoenix shows that the Bridge Company should not have the relief now prayed without first restoring to Phoenix that which the Bridge Company has received from Phoenix and its predecessors in interest in the transactions described in said Supplemental and Ancillary Bill, and alleges:

17. The Bridge Company was incorporated for the specific purpose of constructing a bridge across the Mississippi River near Lansing, Iowa, and the approaches and [fol. 184] appurtenances therefor (hereinafter referred to collectively as the Bridge Project). Prior to November 1, 1930, it had entered into valid, subsisting contracts for the engineering, grading and the construction of the substructure

ture of the Bridge Project and these contracts by assignment had become contracts between the Bridge Company and John W. Shaffer & Company, a Minnesota corporation (hereinafter referred to as Shaffer & Co.) At November 1, 1930, the work on these three contracts was uncompleted and the Bridge Company was indebted to Shaffer & Co. in a substantial amount. At November 1, 1930, no contract had been entered into for the superstructure on the bridge and the status of said contracts was as follows:

	Per cent. completed	Per cent. of completed work paid for	Per cent. of total work unpaid
Engineering	50%	60%	70%
Grading	40%	100%	60%
Substructure	80%	75%	40%
Superstructure	0%	0%	100%

The Bridge Company was without funds or sufficient assurance of funds to enable it to enter into the superstructure contract. Its sole possible source of funds was from the sale of its own shares of capital stock and these could not be sold without a definite program for the completion of the Bridge Project. In this situation, and in order to provide for the construction of the major portion of the superstructure of the bridge out of the net proceeds from the sale of shares of the capital stock of the Bridge Company, the following contracts were entered into, constituting a single integrated plan:

(a) A contract between the Bridge Company and Shaffer & Co. dated November 11, 1930 (hereinafter called the superstructure contract), wherein Shaffer & Co., in consideration of \$10,000. paid and 3200 shares of the capital stock [fol. 185] of the Bridge Company to be delivered to it, undertook to complete the superstructure in accordance with certain plans and specifications attached to the contract. The contract provided that the Bridge Company should reimburse Shaffer & Co. at cost plus 15% for all extra work and material on the superstructure that might be ordered by the Bridge Company.

(b) A subcontract dated November 8, 1930, between Shaffer & Co. and McClintie-Marshall Company, a Delaware corporation, whereby the latter undertook to furnish the

steel required by the said plans and specifications for the superstructure and an amendment to said subcontract dated December 4, 1930, whereby McClintic-Marshall Company undertook to furnish certain extra steel, services and equipment required by the Bridge Company but not specified in the said plans and specifications. The obligation for said extras to McClintic-Marshall Company amounted to \$30,-214.38 under said amendment.

(c) A subcontract dated November 11, 1930, between Shaffer & Co. and Industrial Contracting Company, a Minnesota corporation, whereby the latter, in accordance with the schedule of costs set forth in said contract, undertook to erect the steel comprising the superstructure and to do certain other work and furnish certain materials specified in said subcontract. The obligation to Industrial Contracting Company for extras, in addition to the requirements of the said plans and specifications amounted to approximately \$10,000.

(d) An agreement dated November 10, 1930, between Phoenix Finance System, Inc., Shaffer & Co., and the Bridge [fol. 186] Company (hereinafter called the Financing Agreement), whereby Phoenix Finance System, Inc., guaranteed the payments required to be made by Shaffer & Co. to McClintic-Marshall Company and Industrial Contracting Company under the subcontracts above described. The Bridge Company delivered to Phoenix Finance System, Inc. 140 shares of the capital stock of the Bridge Company in consideration for such guarantees and as a further consideration therefor agreed by said contract that if Phoenix Finance System, Inc. was required to pay out any money by reason of such guarantees, the Bridge Company would repay to Phoenix Finance System, Inc. said sum upon demand with interest at 8% per annum after March 1, 1931, and further agreed that Phoenix Finance System, Inc. might take over possession and control of the Bridge project and properties to secure such repayment, in the event of any default of the Bridge Company in the performance of its undertaking. Pursuant to said Financing Agreement, Phoenix Finance System, Inc. executed written guarantees to McClintic-Marshall Company and Industrial Contracting Company, guaranteeing the payments required to be made to them under said subcontracts.

(e) An agreement dated November 26, 1930, between Shaffer & Co. and Thompson & Company whereby Shaffer & Co. endorsed and delivered to Thompson & Company 1400 shares of Class A stock and 1800 shares of Class B stock, being the 3200 shares of stock delivered to Shaffer & Co. under the superstructure contract, for the purpose of enabling Thompson & Company to sell such shares and with the option to Thompson & Company to return any shares unsold by it or to pay for any shares which it did sell at \$70 a share or by such consideration other than cash [fol. 187] as it received upon the sale of such shares.

(f) An agreement dated November 26, 1930, between the Bridge Company and Thompson & Company (hereinafter called the Fiscal Agreement) which recited the payment of \$10,000. and the delivery of 3200 shares of the capital stock of the Bridge Company to Shaffer & Co. and the necessity for marketing such shares "to provide the money with which John W. Shaffer & Co. will complete said bridge" and the desirability of having the assistance of Thompson & Company in the sale of additional shares of said stock for the Bridge Company. By said agreement Thompson & Company agreed to put forth diligent effort to sell said shares as the fiscal agent of the Bridge Company and the Bridge Company agreed that all sales under the agreement would be on behalf of and would benefit the Bridge Company either directly or indirectly, and agreed to save and hold Thompson & Company harmless and free from loss by reason of any of its operations under the contract and to indemnify it against any loss and to repay to it upon demand the full extent of any such loss.

True copies of said agreements are attached as Exhibits L, M, N, J, K, and I, respectively, to the answer filed herein by Phoenix on October 9, 1939, and struck by this Court November 7, 1939, and said agreements are hereby incorporated herein by reference.

18. On or about March 10, 1931, Phoenix Finance System, Inc., loaned to the Bridge Company \$35,000. to be used by the latter, and which was used by it, to pay a part of its indebtedness to Shaffer & Co. under the engineering, grading and substructure contracts above described. The

indebtedness so paid constituted a lien on the bridge properties.

[fol. 188] 19. On or about March 10, 1931, Phoenix Finance System, Inc., loaned to the Bridge Company \$15,000. which was paid over by the Bridge Company to Thompson & Company, then acting as fiscal agent for the Bridge Company in accordance with the Fiscal Agreement. The payment to Thompson & Company increased the credit balance of the Bridge Company with Thompson & Company to \$18,222.90. By July 11, 1931, this entire credit and all other credits in favor of the Bridge Company had been paid over to the Bridge Company by Thompson & Company.

20. Said loans of \$35,000. and \$15,000. were made in reliance upon the specific undertaking of the Bridge Company to repay the sums so advanced, which undertaking was evidenced by its promissory note in the amount of \$50,000 payable to the order of Phoenix Finance System, Inc. with interest at 8% per annum from March 10, 1931, secured by a mortgage of all of the properties of the Bridge Company. Said mortgage was duly authorized by the Board of Directors of the Bridge Company and ratified by its stockholders and executed and delivered as of March 10, 1931. Said mortgage contained the following provision, inter alia:

"And the said Iowa-Wisconsin Bridge Company further agrees that the said Phoenix Finance System, Inc., at any time during the existence of this indebtedness, or any part thereof, and until the same is fully paid, shall have full power and is hereby authorized as attorney-in-fact for said Iowa-Wisconsin Bridge Company to pay all liens of any kind, whether prior or subsequent, that may in any manner affect the title to the lands, buildings, structures, toll bridge and appurtenances herein and hereby conveyed, and for the repayment of all moneys so paid, together with interest thereon at the rate of eight per cent per annum, payable semi-annually, this indenture shall be like security, in like manner, and with like effect as for the payment of said note."

21. On or about September 24, 1931, Phoenix Finance System, Inc., loaned to the Bridge Company \$10,000., in re-[fol. 189] liance upon the Financing Agreement and said



mortgage agreement. Said loan was made to the Bridge Company to be used by it and was used by it to pay its indebtedness to Industrial Contracting Company in that amount for extra work done and extra materials furnished under the subcontract between it and Shaffer & Co. in addition to that required by the plans and specifications attached to the superstructure contract, which indebtedness constituted a lien on the bridge properties for which the Bridge Company was liable under the superstructure contract.

22. On or about November 10, 1931 Phoenix Finance System, Inc. loaned to the Bridge Company \$9,000. in reliance upon said mortgage agreement. Said loan was made to the Bridge Company to be used by it and was used by it to pay an indebtedness to Kremer & Hog in that amount for grading work on the Bridge Project, which indebtedness constituted a lien on the bridge properties for which the Bridge Company was liable under its said contract for grading with Shaffer & Co.

23. On or about December 24, 1931 Phoenix Finance System, Inc. loaned to the Bridge Company \$11,262.71 in reliance upon the Financing Agreement and said mortgage. Said loan was consummated by delivering to the Bridge Company United States Treasury Certificates in the par amount of \$10,000. Said Treasury Certificates were delivered to the Bridge Company and accepted by it at the cost to Phoenix Finance System, Inc. of \$11,262.71, disregarding accrued interest. The loan was made to the Bridge Company to be used by it, and out of the sum of \$10,112.71 realized on the sale of said certificates, \$9,258.60 was used by it to pay in part its indebtedness to McClintic-Marshall Company for extra labor and materials supplied [fol. 190] for the Bridge Project under the amendment of December 4, 1930 to said subcontract. The Bridge Company was liable for said indebtedness under the superstructure contract and it constituted a lien on the bridge properties.

24. From time to time Phoenix loaned to the Bridge Company for its general corporate purposes, and in reliance upon its agreement to repay the amounts so loaned with interest at 8% per annum the following sums:



January 20, 1932	\$3,125.
February 15, 1932	2,000.
February 27, 1932	1,000.
February 7, 1933	6,896.
February 9, 1933	2,910.

Said loan of \$3,125 was made and was used to pay taxes on the bridge properties, which constituted a lien thereon. During the period from October 31, 1931 to June 30, 1933 Phoenix and its predecessor in interest, Phoenix Finance System, Inc., furnished to the Bridge Company office space and the services of employees of the reasonable value of \$1505.75 which the Bridge Company agreed to repay to Phoenix with interest at 8% per annum, and in February, 1932 paid to Oscar Thorson \$400. and to M. White \$250. for the account of the Bridge Company and in payment of the salaries due to said Thorson and White from the Bridge Company, which amounts the Bridge Company agreed to repay with interest at 8% per annum. The loans and advances specified in this paragraph were represented in part by promissory notes of the Bridge Company payable to the order of Phoenix with interest at 8% per annum as follows:

\$2000.60 dated February 15, 1932

3125.00 dated January 20, 1932

500.00 dated December 31, 1932

12,110.19 dated July 7, 1933.

[fol. 191] 25. From time to time Phoenix and Phoenix Finance System, Inc., directly or through its subsidiary, Thompson & Company, paid out large sums of money to or for the benefit of the Bridge Company under said guarantees and in reliance upon said Financing Agreement and mortgage agreement, the total of all such payments and advances aggregating over \$300,000., all of which was repaid except \$98,349.46 of loans and advances hereinabove specifically described. No portion of said indebtedness of \$98,349.46 has ever been repaid by the Bridge Company to Phoenix and the Bridge Company has no credits and no other claims to set-off against said indebtedness, and no

interest has been paid on any of said indebtedness except \$9,390. received by Phoenix from the Bridge Company as interest on bonds issued to it by the Bridge Company, being bonds secured by the trust deed held invalid by the said decree of December 1, 1936.

26. Phoenix has purchased for value and is the owner of all rights of Phoenix Finance System, Inc. and Thompson & Company against the Bridge Company arising out of the transactions hereinabove described.

27. Phoenix alleges that the aggregate of said loans and advances to the Bridge Company which have not been repaid is \$98,349.46 and that by such amount the Bridge Company has been unjustly enriched at the expense of Phoenix; that \$81,383.60 of such amount constitutes a lien upon the properties of the Bridge Company; and that the Bridge Company should be denied all relief against Phoenix until such amounts have been paid in full together with interest at 8% per annum, and prays this Court to find that the Bridge Company is so indebted to Phoenix and that Phoenix has a lien upon the properties of the Bridge Company in the amount of \$81,383.60, and to require the payment of such indebtedness and said interest and the sale of the properties of the Bridge Company to satisfy said [fol. 192] lien. Phoenix alleges that it holds \$117,100. par value of first mortgage bonds of the Bridge Company issued to it on account of or as security for a part of such indebtedness, that said bonds are secured by the trust deed held invalid by the decree of December 1, 1936. and said bonds have been repudiated by the Bridge Company, and Phoenix hereby offers to deliver up said bonds and the \$50,000. note and mortgage and the several notes described in paragraph 24 hereof to the Bridge Company on the payment of the indebtedness and interest secured thereby.

28. On or about November 26, 1930 the Bridge Company issued and delivered to Shaffer & Co. 3200 shares of its capital stock pursuant to the superstructure contract. On or about that date Shaffer & Co. delivered said shares to Thompson & Company for sale for the benefit of the Bridge Company under the Fiscal Agreement and the agreement hereinabove described between Shaffer & Co. and Thompson & Company. As at December 31, 1931

Thompson & Company had sold 2174 of said shares and had paid Shaffer & Co., \$70 a share for the shares so sold. In addition it had advanced to Shaffer & Co. directly and indirectly, a sum in excess of \$51,700., for which it held as security 477 shares of A stock and 549 shares of B stock of the Bridge Company. In addition Thompson & Company advanced to the Bridge Company \$3,400 on the security of 40 shares of A stock and \$2,125. on the security of 25 shares of B stock of the Bridge Company. In settlement of a portion of said advances the Bridge Company delivered to Phoenix, as the successor in interest of Thompson & Company, \$60,500. par value of first mortgage bonds, and Phoenix transferred to the Bridge Company said 477 and said 40 shares of A stock, which the Bridge Company still holds as treasury stock. Said first mortgage bonds were secured by the trust deed held invalid by this Court by its decree of December 1, 1936 and have been repudiated by the Bridge Company. The Bridge Company [fol. 193] should be denied all relief against Phoenix until it has restored to Phoenix said 517 shares or repaid to it the indebtedness secured thereby which it has heretofore failed and refused to do, and prays this Court to find the amount of said indebtedness and to require the payment thereof or the return of said shares. Phoenix offers to return to the Bridge Company said first mortgage bonds upon the return of said shares or the repayment of said indebtedness.

29. Phoenix alleges that it has at all times stood ready and now offers to make a full and complete accounting and to do equity in the premises and to render to the Bridge Company that to which it is in equity and good conscience entitled.

#### Seventh Defense

Without waiving the defenses heretofore urged, Phoenix shows that it would be inequitable to construe the decree of December 1, 1936 herein as set forth in the Supplemental and Ancillary Bill herein or to grant the Bridge Company the relief now prayed, and in support thereof Phoenix re-alleges the matters and things set forth in paragraphs 17 to 29, inclusive, hereof, and further alleges:

30. The engineering, grading and substructure contracts described in paragraph 17 hereof were approved by the Board of Directors of the Bridge Company or by its Executive Committee, free from any control or domination by Shaffer or those associated with him in Shaffer & Co. or in Standard Shares Holding Company, and on November 1, 1930 were valid and subsisting contracts of the Bridge Company and continued to be valid and subsisting contracts until August 6, 1931, when the said contracts were terminated by an agreement between the Bridge Company and Shaffer & Co. There was no agreement or understanding, express or implied, in said contracts or otherwise binding upon the Bridge Company or Shaffer & Co. limiting the cost of the bridge or fixing a final date for its completion.

[fol. 194] 31. Prior to the fall of 1930 there had been no contact between Shaffer and his associates and Phoenix, Phoenix Finance System, Inc., Thompson & Company, or J. A. Thompson, and none of the latter had any interest in the Phoenix Building in Minneapolis, Minnesota, or any office in that building.

32. There was never at any time any agreement between Shaffer or his associates or Shaffer & Co. with said John A. Thompson, Phoenix, Phoenix Finance System, Inc., or Thompson & Company that the latter or any of them should exercise any control over the Bridge Company, and neither collectively nor individually did they ever control or dominate the Bridge Company.

33. The payment of \$10,000. and delivery of 3200 shares of stock to Shaffer & Co. under the superstructure contract did not constitute payment in full for the superstructure, and did not purport to cover extra work, materials and services not specified in the plans and specifications attached to said contract. After the making of said contract, the plans were modified to increase the safety of the bridge, and such modification increased the cost of the superstructure by approximately \$46,613.98, for which the Bridge Company became liable to Shaffer & Co. under the superstructure contract.

34. There was adequate consideration to the Bridge Company for the 140 shares of stock issued to Phoenix

Finance System, Inc. in accordance with the Financing Agreement and the obligation of the Bridge Company to indemnify Phoenix Finance System, Inc. as provided in said agreement. The consideration was the agreement on the part of Phoenix Finance System, Inc. to guarantee all payments to McClintie-Marshall Company and Industrial Contracting Company under the superstructure sub-contracts, including extras, which guarantee was indispensable [fol. 195] to the making of the superstructure contract or the superstructure subcontracts.

35. There was no default by Shaffer & Co. under its several contracts and no entries were made on the Bridge Company books to make it appear that Shaffer & Co. had defaulted under any such contracts.

36. No fictitious entries were made on the books of the Bridge Company with respect to said loans of \$35,000. and \$15,000. of March 10, 1931 or any other loans or advances to the Bridge Company, but the facts as to all said loans and advances were correctly recorded on the books of the Bridge Company and in the minutes of the meetings of its stockholders and Board of Directors.

37. The settlement by the Bridge Company with Shaffer & Co. and its associates in August, 1931 did not create any obligation on the part of Phoenix Finance System, Inc., or Thompson & Company, or Phoenix, or John A. Thompson, to assume any obligations of Shaffer & Co. to its subcontractors or specifically to assume the obligation to pay Industrial Contracting Company the sum of \$10,000. or any part thereof, or to pay McClintie-Marshall Company the indebtedness described in paragraph 23 hereof. Said settlement did not relieve the Bridge Company of its liability to pay said indebtedness and its liability to Phoenix Finance System, Inc. under said Financing Agreement.

38. All acts by J. A. Thompson as President of the Bridge Company and by directors or employees of Phoenix or Phoenix Finance System, Inc. serving as directors or employees of the Bridge Company, and all transactions with the Bridge Company on the part of Phoenix, Phoenix Finance System, Inc. and Thompson & Company, were done and entered into in good faith for the benefit and pro-



tection of the Bridge Company and with no concealment of any material facts.

39. To the extent that the findings of this Court as en- [fol. 196] tered December 1, 1936 and its decree are inconsistent with the foregoing allegations, the said findings and decree are contrary to the facts and are the result of the tactics of the interveners and their counsel in the trial of the foreclosure proceedings, first, in presenting to this Court a voluminous record consisting largely of testimony and exhibits relating to immaterial and irrelevant issues, so confused, ambiguous and disorderly as to make it difficult, if not impossible, for the Court to ascertain the facts and to compel the Court to rely upon the representations of counsel, and second, in making false representations or inadvertent misrepresentations, particularly with respect to the relationship between John A. Thompson and Shaffer prior to November 1, 1930, the status of completion of the Bridge Project at November 1, 1930, the fact that the 3200 shares of stock and \$10,000. paid to Shaffer & Co. under the superstructure contract did not cover or purport to cover extras under that contract nor pay for completion of the Bridge Project, the fact that the Bridge Company was indebted to Shaffer & Co. on March 10, 1931 far in excess of \$35,000., and the fact that the loans to the Bridge Company by Phoenix Finance System, Inc. in September and December, 1931 were for the purpose of enabling it to make payments to Industrial Contracting Company and McClintic-Marshall Company for extras under said superstructure contract, for which the Bridge Company was liable under said contract. By reason thereof the said findings and decree are contrary to the facts in other respects, not herein specified.

40. As to said matters, Phoenix has not had its day in court. Counsel for complainant Trustees in the foreclosure proceedings had complete charge of the litigation, as this Court found by its order of January 5, 1937. Said counsel acted throughout the proceedings under the belief that the only issues before the Master to whom said cause [fol. 197] had been referred were the validity of the deed of trust, the existence of a default, and the right to a foreclosure, and that any question as to the validity of the bonds or the consideration received by the Bridge Com-



pany therefor was reserved for determination at a second stage of the proceedings. This belief was founded in part upon the prevailing practice with respect to foreclosure proceedings in the United States courts and in part upon the apparent ruling of the Master that such would be the procedure before him. In the said proceedings before the Master and on exceptions to the Master's report and at other times in the proceedings, counsel for the interveners and counsel for the Bridge Company repeatedly asserted and represented that the indebtedness of the Bridge Company to any bondholder was not in issue and could not be adjudicated in such foreclosure proceedings. Relying upon such representations and their belief as to the procedure to be followed, the Trustees offered substantially no evidence on their prima facie case on the foreclosure proceedings with respect to the consideration for any of the bonds, and the proofs offered in their behalf were merely the prima facie proofs in a foreclosure proceeding. Almost no cross-examination was attempted of the various witnesses called by the Bridge Company and the interveners in said cause and no evidence whatever was offered in rebuttal of the testimony of such witnesses, and counsel for the Trustees notified many prospective witnesses that their testimony would be required at a later stage of the proceedings.

41. Relying upon the representations of counsel for the interveners and the defendant as to the issues, sharing the belief of counsel for the Trustees that any question with respect to the validity of the bonds was reserved for a later stage of the proceedings, and recognizing that Phoenix was only a nominal party to the proceedings, counsel for Phoenix offered no evidence in said foreclosure proceedings.

42. By his report in the foreclosure proceedings, the Master found that over \$27,000. of bonds secured by the trust deed before him were issued for a valid consideration [fol. 198] or to secure bona fide indebtedness of the Bridge Company and that the Trustees were entitled to a decree of foreclosure, thereby leaving the proofs as to the remaining bonds still subject to determination after such a decree should be entered. This Court held that only \$15,000. of said bonds had been issued for a valid consid-

eration, and that the amount of said bonds did not justify a foreclosure and proceeded to enter a final decree, thereby terminating the foreclosure proceedings and the rights of bondholders to prove the consideration for their bonds in said cause.

43. The foregoing matters were brought to the attention of this Court on a petition for rehearing filed in behalf of Phoenix, but this Court refused to exercise its discretion and grant the rehearing on the ground that Phoenix had failed to comply with an order of the Court to produce its books and records. The order referred to was entered April 24, 1934 and directed that:

"the defendant, Phoenix Finance Corporation, produce at its office in Des Moines, Iowa, all its books and records appertaining to the business and affairs of the Iowa-Wisconsin Bridge Company within ten days from date of this order and submit them to the inspection of the intervener and its counsel and accountant." (Printed Record, p. 96.)

The books were duly produced as required by said order and copies of the pertinent entries were furnished to counsel for the interveners and the ruling of the Court on the Petition for Rehearing was solely the result of the deliberate misrepresentations to the Court by counsel for the interveners, in response to the petition for rehearing, that Phoenix had defied the order of the Court with respect to such books and papers.

44. In support of said petition for rehearing, counsel for Phoenix submitted affidavits of witnesses to establish the facts heretofore recited with respect to the matters embodied in the findings and decree of the Court and the understanding of counsel as to the two-stage procedure to be followed. It endeavored to procure affidavits from [fol. 199] other witnesses to substantiate the allegations of the petition for rehearing, but F. A. Ontjes, attorney for the interveners, the intervener, Thomas Bakewell, and Irene Bell, an employee or associate of said Ontjes, made it impossible to obtain such affidavits by visiting prospective witnesses and falsely representing to them that John A. Thompson was a crook, that he had been found guilty of conspiracy, that he was soon to be sent to the penitentiary, that any former or present stockholder or director of the

Bridge Company would likewise be sent to the penitentiary if he signed any document or affidavit for a representative of Phoenix, and cautioned such witnesses to shun Thompson and to sign no documents. As a consequence, a large number of former and then stockholders and directors and others whose affidavits were vital to the presentation of the true facts to the Court refused to discuss the facts with any representative of Phoenix or to sign any affidavit for Phoenix.

45. Phoenix asserts that it would be contrary to equity and good conscience to construe the findings and decree of December 1, 1936 as any adjudication with respect to the validity of said \$50,000. mortgage or the matters and things involved in the litigation in the State of Delaware brought by Phoenix against the Bridge Company or to grant to the Bridge Company any affirmative relief with respect thereto.

CASPER SCHENK,  
917 Des Moines Building,  
Des Moines, Iowa.

JAMES R. MORFORD,  
829 Delaware Trust Bldg.,  
Wilmington, Del.

HAROLD W. NORMAN,  
(HAROLD W. NORMAN and  
EDWARD A. ZIMMERMAN—  
ZIMMERMAN AND NORMAN),  
111 West Monroe St.,  
Chicago, Illinois  
Attorneys for Phoenix Finance  
Corporation.

Filed in the District Court November 27, 1939.

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[fol. 200] (Motion of Iowa-Wisconsin Bridge Company to Strike Answer and Counterclaim of Phoenix Finance Corporation.)

Comes now defendant Iowa-Wisconsin Bridge Company by its attorneys and moves the court as follows, to-wit:

(1) To strike the "Answer and Counterclaim" of Phoenix Finance Corporation in its entirety for the reasons

that it is saturated with alleged evidence, argument, foreign matter and conclusions and is in violation of Rule 8 of the Rules of Civil Procedure, particularly sub-division (b), and is prolix.

(2) Subject to the Court's ruling on division (1) hereof, moves the court to strike from paragraph 1 of said Answer and Counterclaim the last three lines commencing with the words "but alleges" on page one and the remainder of said paragraph on page two, on the ground that the same is argument and conclusions.

(3) Subject to the Court's ruling on division (1) hereof, moves the Court to strike from said Answer and Counterclaim alleged defenses and counterclaim two to seven inclusive, consisting of paragraphs 13 to 45 both inclusive and to strike each of said defenses and counterclaim and each of said paragraphs separately for the following reasons, to-wit:

(a) That the same are saturated with alleged evidence, argument, foreign matter and conclusions in violation of Rule 8 of the Rules of Civil Procedure and particularly subdivision (b) and are prolix.

(b) That the matters pleaded in said alleged defenses and paragraphs are insufficient in law to constitute a defense to the Supplemental and Ancillary Bill of Complaint herein and are not responsive to the issues tendered by the Supplemental and Ancillary Bill and are repetitious, incompetent, irrelevant and redundant matter.

(c) That the matters involved in this cause and presented by the Ancillary and Supplemental Bill as amended have been adjudicated and that a counterclaim cannot be filed subsequent to such adjudication; that the matters alleged do not constitute any basis for counterclaim and that the alleged counterclaim is included in the Answer without leave or permission of Court, and that the matters alleged in said paragraphs are sham, impertinent and contemptuous matter.

(4) Subject to the court's ruling on divisions (1) and (3) hereof, to strike the sixth defense and counterclaim and seventh defense consisting of paragraphs 17 to 45 both inclusive and to strike each of said defenses and counter-

claim and each of said paragraphs thereof separately for all the reasons stated in division (3) hereof.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Co.

Filed in the District Court, November 28, 1939.

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[fol. 202] (Notice of Hearing of Motion to Strike Answer and Counterclaim.)

To Casper Schenk, James R. Morford and H. W. Norman,  
Attorneys for Phoenix Finance Corporation:

You And Each Of You Are Hereby Notified that the defendant, Iowa-Wisconsin Bridge Company, has filed a Motion to Strike in the above entitled cause, a copy of which is hereto attached and made a part hereof, and that said motion will come on for hearing and submission at Dubuque, Iowa, in the United States District Court Room on December 5th, 1939 at ten o'clock A. M., or as soon thereafter as the same can be heard by the Court.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant.  
Iowa-Wis. Bridge Company.

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We hereby accept service of the foregoing Notice and acknowledge receipt of copy thereof this 28th day of November, 1939.

JAMES R. MORFORD,  
H. W. NORMAN,  
CASPER SCHENK,  
Attorneys for Phoenix Finance  
Corporation.

Filed in the District Court, December 1, 1939.

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[fol. 203]

## Motion to Strike.

Comes now defendant Iowa-Wisconsin Bridge Company by its attorneys and moves the court as follows, to-wit:

(1) To strike the "Answer and Counterclaim" of Phoenix Finance Corporation in its entirety for the reasons that it is saturated with alleged [evidence,] argument, foreign matter and conclusions and is in violation of Rule 8 of the Rules of Civil Procedure, particularly sub-division (b), and is prolix.

(2) Subject to the Court's ruling on division (1) hereof, moves the court to strike from paragraph 1 of said Answer and Counterclaim the last three lines commencing with the words "but alleges" on page one and the remainder of said paragraph on page two, on the ground that the same is argument and conclusions.

(3) Subject to the Court's ruling on division (1) hereof, moves the Court to strike from said Answer and Counterclaim alleged defenses and counterclaim two to seven inclusive, consisting of paragraphs 13 to 45 both inclusive and to strike each of said defenses and counterclaim and each of said paragraphs separately for the following reasons, to-wit:

(a) That the same are saturated with alleged evidence, argument, foreign matter and conclusions in violation of Rule 8 of the Rules of Civil Procedure and particularly subdivision (b) and are prolix.

(b) That the matters pleaded in said alleged defenses and paragraphs are insufficient in law to constitute a defense to the Supplemental and Ancillary Bill of Complaint [fol. 204] herein and are not responsive to the issues tendered by the Supplemental and Ancillary Bill and are repetitious, incompetent, irrelevant and redundant matter.

(c) That the matters involved in this cause and presented by the Ancillary and Supplemental Bill as amended have been adjudicated and that a counterclaim cannot be filed subsequent to such adjudication; that the matters alleged do not constitute any basis for counterclaim and that the alleged counterclaim is included in the Answer without leave or permission of Court, and that the matters



alleged in said paragraphs are sham, impertinent and contemptuous matter.

(4) Subject to the court's ruling on divisions (1) and (3) hereof, to strike the sixth defense and counterclaim and seventh defense consisting of paragraphs 17 to 45 both inclusive and to strike each of said defenses and counterclaim and each of said paragraphs thereof separately for all the reasons stated in division (3) hereof.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Co.

[fol. 205] (Order Striking Certain Matter From Answer and Counterclaim.)

On this 18th day of December, 1939, the above entitled cause came on for hearing on the motion of the Iowa-Wisconsin Bridge Company, the original principal defendant, and now the complainant in the Supplemental and Ancillary Complaint, to strike the answer and so-called counterclaim to said supplemental and ancillary complaint, and alternatively to strike various portions thereof described in the motion. And said motion having been orally argued by consent of Court, and briefs filed and considered,

It is now, therefore, Ordered:

First. That there be stricken from said answer, paragraph one "First Defense", all that part on page one following the word "only" on the next to the last line of said paragraph, and the quoted paragraph at the top of page two of said answer.

Second. That there be stricken from said answer, numerical paragraphs 13 to 45 inclusive, being designated defenses second to seventh inclusive, for the reason that in [fol. 206] such paragraphs and defenses the respondent, Phoenix Finance Corporation, is clearly endeavoring to re-litigate questions of fact and law which were fully litigated and opportunity given to litigate on the trial of the principal case, in which trial and decision all accounts, indebtedness and matters entering into the consideration of

the issue of each and all of the bonds secured by the mortgage sought to be foreclosed were in question, and were considered and determined.

The Court being of opinion that the remaining matters, including admissions and denials set forth in the first division of said answer designated as "First Defense", are sufficient for the proper consideration and determination of all issues presented by said supplemental and ancillary complaint, no further time is granted or permission granted to further amend said answer.

To all of which an exception is reserved to the Phoenix Finance Corporation, respondent.

Done and Ordered this 18th day of December, 1939, at Sioux City, Iowa, to be entered of record in the Eastern Division.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, December 18, 1939.

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[fol. 207] (Notice of Phoenix Finance Corporation of Intention to Take Depositions of George E. Preuss, et al.)

In compliance with Rule 5 of the United States District Court for the Northern District of Iowa, Phoenix Finance Corporation, defendant to the Supplemental and Ancillary Bill as Amended of the Iowa-Wisconsin Bridge Company, hereby files its notice of intention to take the depositions of the following parties;

George E. Preuss, a resident of Chicago, Illinois, 6707 N. Greenview Avenue;

Edgar S. Gage, a resident of Chicago, Illinois, 10640 S. Claremont Avenue;

Albert Penn, a resident of Goshen, Indiana;

Lee J. Skoner, a resident of Chicago, Illinois, 3039 North Avers Avenue;

John A. Thompson, a resident of St. Petersburg, Florida, 5556 16th Avenue, N. E.

The particular occasion for taking the testimony of the foregoing witnesses in the form of depositions is their residence without the jurisdiction of this Court and of the State of Iowa.

[fol. 208] Phoenix Finance Corporation will proceed with due diligence to take the foregoing depositions in accordance with the rules of Civil Procedure, giving hereafter due notice in compliance with said rules to all parties entitled thereto.

HAROLD W. NORMAN,  
JAMES R. MORFORD,  
CASPER SCHENK,  
Attorneys for Phoenix Finance  
Corporation.

Filed in the District Court, December 28, 1939.

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[fol. 209] (Notice of Taking Depositions.)

To Iowa-Wisconsin Bridge Company, or to its Attorneys,  
F. A. Ontjes and W. C. Green:

You are hereby notified that, in accordance with the Notice of Intention to Take Depositions, heretofore filed in the above entitled cause, the Depositions of George E. Preuss, a resident of Chicago, Illinois, 6707 N. Greenview Avenue; Edgar S. Gage, a resident of Chicago, Illinois, 10640 S. Claremont Avenue; and Lee J. Skoner, a resident of Chicago, Illinois, 3039 North Avers Avenue, will be taken upon oral examination at No. 1709 Harris Trust Building, in the City of Chicago, Cook County, Illinois, on January 29, 1940, at 10:00 o'clock A. M., before Roy Fuller, Notary Public and Court Reporter, or before some other officer then and there qualified to take the same as authorized by law.

JAMES R. MORFORD,  
HAROLD W. NORMAN,  
CASPER SCHENK,  
Attorneys for Phoenix Finance  
Corporation.

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### Acceptance of Service.

Service of the foregoing Notice is hereby acknowledged and copies thereof received on this 24 day of January, 1940.

**F. A. ONTJES,**

**W. C. GREEN,**

**Attorneys for Iowa-Wisconsin  
Bridge Company.**

Filed in the District Court, April 20, 1940.

[fol. 210] (Notice of Taking Depositions.)

To Iowa-Wisconsin Bridge Company, or to its Attorneys,  
F. A. Ontjes and W. E. Green:

You are hereby notified that, in accordance with the Notice of Intention to Take Depositions heretofore filed in the above entitled cause, the Depositions of George E. Preuss, a resident of Chicago, Illinois, 6707 N. Greenvview Avenue; Edgar S. Gage, a resident of Chicago, Illinois, 10640 S. Claremont Avenue; and Lee J. Skoner, a resident of Chicago, Illinois, 3039 North Avers [Avnue], will be taken upon oral examination at No. 1709, Harris Trust Building, in the City of Chicago, Cook County, Illinois, on February 29, 1940, at 10 o'clock A. M., before Roy Fuller, Notary Public and Court Reporter, or before some other officer then and there qualified to take the same as authorized by law.

**JAMES R. MORFORD,**

**HAROLD W. NORMAN,**

**CASPER SCHENK,**

**Attorneys for Phoenix Finance  
Corporation.**

### Acceptance of Service.

Service of the foregoing notice is hereby acknowledged and copies thereof received on this 23rd day of January, 1940.

**F. A. ONTJES,**

**W. C. GREEN,**

**Attorneys for Iowa-Wisconsin  
Bridge Company.**

Filed in the District Court, April 20, 1940.

[fol. 211] (Motion of Iowa-Wisconsin Bridge Company to Strike Notices of Intention to Take Depositions of George E. Preuss, et al.)

Comes now the defendant Iowa-Wisconsin Bridge Company and moves the court as follows:

(a) To strike from the files the notice of intention to take depositions filed by the Phoenix Finance Corporation.

(b) To enter an order that the depositions of the parties therein specified shall not be taken.

(c) To enter an order that the depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner, specified in the Phoenix Finance Corporation's notice to take depositions shall not be taken.

(d) To set and to proceed with the hearing on permanent injunction.

on the following grounds and for the following reasons to-wit:

(1) That this cause has been tried on its merits and the time for taking depositions has expired.

(2) That Albert Penn and John A. Thompson mentioned in said notice of intention to take depositions are officers and directors of the Phoenix Finance Corporation and have been in attendance on the various hearings had [fol. 212] with respect to the Supplemental and Ancillary Bill as Amended and Answer thereto herein and that no reason exists or has been assigned why the said Phoenix Finance Corporation cannot have them present on the hearing for permanent injunction, nor has it asserted that they will not be present at such hearing.

(3) That said George E. Preuss, Edgar S. Gage and Lee J. Skoner named in the notice served for taking of depositions are accountants.

That George E. Preuss was not present at the trial of this cause nor at the hearing of exceptions nor at hearing of petition for rehearing and is not in position to give any competent, material or relevant evidence to what was involved in this cause. That the first time his name appeared in the record in this case was when it was included

in Phoenix Finance Corporation's notice of intention to take depositions.

That said Lee J. Skoner is an accountant with Ernst and Ernst and did certain work for the Phoenix Finance Corporation and made an affidavit, which is attached to said corporation's Petition for Rehearing in this cause, wherein he purported to give certain accountancy figures. (R. 308-312) That he is not in a position to give any competent, relevant or material evidence as to what was involved in the hearings in this cause, the record itself in this case being the best evidence.

That the said Edgar S. Gage was a witness on the trial of this cause and his testimony appears in the transcript filed herein; that he made an affidavit for the Phoenix Finance Corporation, which is attached to its Petition for Rehearing on file in this cause. (R. 271-276) That he is not in a position to give any competent, relevant or material evidence as to what was involved in the hearings in this cause, the record itself being the best evidence.

[fol. 213] That said George E. Preuss, Edgar S. Gage and Lee J. Skoner were not present at the stockholders' meetings referred to in the Supplemental and Ancillary Bill as Amended and it is not alleged therein that they wrote any of the letters referred to therein; and on the contrary, it is admitted in Phoenix Finance Corporation's Answer that said letters were written by John A. Thompson substantially as alleged in said Ancillary and Supplemental Bill.

That this Court has stricken from the Answer of Phoenix Finance Corporation its alleged defenses Second to Seventh both inclusive; and that any evidence on the part of such pretended witnesses as to accounting, books or records would be wholly incompetent, irrelevant and immaterial as there is no such issue before the court; and that said witnesses are not in a position to give competent, relevant or material evidence under the issues joined.

That the Iowa-Wisconsin Bridge Company alleges and charges that the said Phoenix Finance Corporation is merely attempting to take depositions with respect to matters stricken from the allegations of the Answer and to delay



the hearing on permanent injunction and to harass and annoy the Bridge Company.

That the time for the taking of the depositions mentioned in said notice for taking depositions has expired and will have expired before said depositions can be taken.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Iowa-Wisconsin  
Bridge Company.

State of Iowa,  
Cerro Gordo County.—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I am attorney for the Iowa-Wisconsin Bridge [fol. 214] Company; that I have read the statements contained in the foregoing motion and that the statements therein contained are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 23rd day of January A. D. 1940.

(Seal)

F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa.

Filed in the District Court January 29, 1940.

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[fol. 215] (Motion and Application of Iowa-Wisconsin Bridge Company for an Order that Depositions of George E. Preuss, et al., Be Not Taken Until Further Order of Court.)

Comes now the defendant Iowa-Wisconsin Bridge Company and respectfully shows to this Honorable Court that the Phoenix Finance Corporation on the 23rd day of January, 1940, served a notice for the taking of depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner in Chicago, Illinois, on February 29th, 1940; that this defendant immediately prepared a motion for an order that said depositions be not taken (Rule 30b) and on the 23rd day of

January, 1940, mailed the same to the Clerk of this Court and that said Motion was filed the forenoon of January 24th; and on January 23, 1940, this defendant also mailed notice for hearing of said motion at Dubuque on the 6th day of February, 1940, with copy of said motion thereto attached to Casper Schenk Des Moines Building, Des Moines, Iowa, attorney for Phoenix Finance Corporation, for acceptance of service; that service thereof was accepted on the afternoon of the 24th day of January and the Phoenix Finance Corporation on the 24th day of January in the afternoon served another notice for the taking of the depositions of the same witnesses in the same city on January 29, 1940.

[fol. 216] That this defendant then immediately prepared a further motion, making the same motion with respect to the last notice as filed with respect to the first notice, which has been mailed to the Clerk of this Court for filing; and that notice of the hearing of such further motion for the 6th day of February, 1940, at Dubuque with copy of said motion thereto attached has been mailed to said Casper Schenk this 24th day of January as provided in Rule 5b.

That the Phoenix Finance Corporation has pending in the Superior Court of New Castle County, Wilmington, Delaware, an action against the Iowa-Wisconsin Bridge Company, wherein said Phoenix is attempting to recover on alleged toll tickets, the sum of \$5,000.00 with interest thereon; that the Phoenix Finance Corporation has had said cause set for trial for the 31st day of January, 1940, and has served notices for the taking of depositions in said cause at Des Moines, Iowa, on January 27th, 1940, and that the bridge company's counsel will have to be present at the taking of such depositions; and that as soon as said depositions are completed it will be necessary for the bridge company's counsel to proceed to Delaware, to be there a day in advance for said trial; and that there is not sufficient time intervening between the 27th day of January and the 31st day of January for the Bridge Company's counsel to be present at the taking of depositions in this cause under the situation on the 29th day of January; that the said second notice served in this cause under the situation is unreasonable.

That the motions for an order that the depositions of the witnesses specified in said notices be not taken under the rules of this Court and the notices served thereof will come on for hearing on the 6th day of February, 1940, at Dubuque; and that to permit said Phoenix Finance Corporation to take said depositions on the 29th day of January, 1940, would deprive the bridge company of the benefit of the Rule 30b entitling it to a ruling on said motions before any such depositions are taken.

Wherefore, defendant Iowa-Wisconsin Bridge Company asks this Honorable Court to enter an order that said depositions shall not be taken until after said motions have been ruled upon by this court, and then only if this court rules that they may be taken. (Rule 30a—Rule 6b.)

F. A. ONTJES,  
W. C. GREEN.

State of Iowa,  
Cerro Gordo County.—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I am an attorney for the Iowa-Wisconsin Bridge Company and have read the statements contained in the foregoing application and motion and know the contents thereof and that the statements therein contained are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 24th day of January, A. D., 1940.

(Seal)

F. T. BARRETT,  
Notary Public.

Filed in the District Court January 25, 1940.

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[fol. 218] (Further Motion of Iowa-Wisconsin Bridge Company for Order that Depositions of George A. Preuss, et al., Be Not Taken.)

Comes now the defendant, Iowa-Wisconsin Bridge Company and shows this Honorable Court that a notice was served by the Phoenix Finance Corporation on the 23rd day of January, 1940, for the taking of the depositions of

George E. Preuss, Edgar S. Gage and Lee J. Skoner on February 29th, 1940, in Chicago, Illinois; that this defendant immediately prepared a motion for an order that said depositions be not taken and mailed the same to the Clerk of this Court for filing and that the same was filed on the forenoon of January 24th, 1940, and that this defendant also on the 23rd day of January mailed to Casper Schenk, counsel for Phoenix Finance Corporation, four copies thereof, together with notice of time of hearing for acceptance of service; that service of said notice was accepted on the afternoon of the 24th day of January, 1940; and the said Phoenix Finance Corporation in the afternoon of said day served another notice for the taking of the same depositions at the same place on January 29th, 1940, at ten o'clock A. M.

The defendant, Iowa-Wisconsin Bridge Company, makes the same motion with respect to said last notice and moves [fol. 219] the Court for an order that said depositions be not taken for all the reasons set forth in the motion heretofore filed with respect to the first notice, which motion is hereby made a part hereof.

F. A. ONTJES,  
W. C. GREEN,

Attorneys for Iowa-Wisconsin  
Bridge Company.

State of Iowa,

Cerro Gordo County.—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I have read the statements contained in the foregoing motion and that the statements therein contained are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 24th day of January, A. D., 1940.

(Seal)

F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa.

Filed in the District Court January 25, 1940.

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[fol. 220] (Notice of Hearing of Motion For an Order that Depositions of George E. Preuss, et al., Be Not Taken.)

To Casper Schenk, James R. Morford and H. W. Norman,  
attorneys for Phoenix Finance Corporation:

You and Each of You Are Hereby Notified that the defendant, Iowa-Wisconsin Bridge Company, has filed a motion in the above entitled cause, a copy of which is hereto attached and made a part hereof, and that said motion will come on for hearing and submission at Dubuque, Iowa in the United States District Court Room on February 6th, 1940, or as soon thereafter as the same can be heard by the court.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Company.

We hereby accept service of the foregoing Notice and acknowledge receipt of copy of Motion thereto attached this 24th day of January, A. D., 1940.

JAMES R. MORFORD,  
H. W. NORMAN,  
CASPER SCHENK.

Attorneys for Phoenix  
Finance Corporation.

Filed in the District Court January 25, 1940.

[fol. 221] (Motion of Iowa-Wisconsin Bridge Company to Strike from Files Notice of Intention to Take Depositions of George E. Preuss, et al., by Phoenix Finance Corporation.)

Comes now the defendant Iowa-Wisconsin Bridge Company and moves the court as follows:

(a) To strike from the files the notice of intention to take depositions filed by the Phoenix Finance Corporation.

(b) To enter an order that the depositions of the parties therein specified shall not be taken.

(c) To enter an order that the depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner, specified in the Phoenix Finance Corporation's notice to take depositions shall not be taken.

(d) To set and to proceed with the hearing on permanent injunction.

on the following grounds and for the following reasons to-wit:

(1) That this cause has been tried on its merits and the time for taking depositions has expired.

(2) That Albert Penn and John A. Thompson mentioned in said notice of intention to take depositions are officers and directors of the Phoenix Finance Corporation and have been in attendance on the various hearings had with respect [fol. 222] to the Supplemental and Ancillary Bill as Amended and Answer thereto herein and that no reason exists or has been assigned why the said Phoenix Finance Corporation cannot have them present on the hearing for permanent injunction, nor has it asserted that they will not be present at such hearing.

(3) That said George E. Preuss, Edgar S. Gage and Lee J. Skoner named in the notice served for taking of depositions are accountants.

That George E. Preuss was not present at the trial of this cause nor at the hearing of exceptions nor at hearing of petition for rehearing and is not in position to give any competent, material or relevant evidence as to what was involved in this cause. That the first time his name appeared in the record in this case was when it was included in Phoenix Finance Corporation's notice of intention to take depositions.

That said Lee J. Skoner is an accountant with Ernst and Ernst and did certain work for the Phoenix Finance Corporation and made an affidavit, which is attached to said corporation's Petition for Rehearing in this cause, wherein he purported to give certain accountancy figures. (R. 308-312) That he is not in a position to give any competent, relevant or material evidence as to what was involved in



the hearings in this cause, the record itself in this case being the best evidence.

That the said Edgar S. Gage was a witness on the trial of this cause and his testimony appears in the transcript filed herein; that he made an affidavit for the Phoenix Finance Corporation, which is attached to its Petition for Rehearing on file in this cause. (R. 271-276) That he is not in a position to give any competent, relevant or material evidence as to what was involved in the hearings in this cause, the record itself being the best evidence.

[fol. 223] That the said George E. Preuss, Edgar S. Gage and Lee J. Skoner were not present at the stockholders' meetings referred to in the Supplemental and Ancillary Bill as Amended and it is not alleged therein that they wrote any of the letters referred to therein; and on the contrary, it is admitted in Phoenix Finance Corporation's Answer that said letters were written by John A. Thompson substantially as alleged in said Ancillary and Supplemental Bill.

That this Court has stricken from the Answer of Phoenix Finance Corporation its alleged defenses Second to Seventh both inclusive; and that any evidence on the part of such pretended witnesses as to accounting, books or records would be wholly incompetent, irrelevant and immaterial as there is no such issue before the court; and that said witnesses are not in a position to give competent, relevant or material evidence under the issues joined.

That the Iowa-Wisconsin Bridge Company alleges and charges that the said Phoenix Finance Corporation is merely attempting to take depositions with respect to matters stricken from the allegations of the Answer and to delay the hearing on permanent injunction and to harass and annoy the Bridge Company.

That the time for the taking of the depositions mentioned in said notice for taking depositions has expired and will have expired before said depositions can be taken.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Iowa-Wisconsin  
Bridge Company.

State of Iowa,  
Cerro Gordo County.—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I am attorney for the Iowa-Wisconsin Bridge [fol. 224] Company; that I have read the statements contained in the foregoing motion and that the statements therein contained are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 23rd day of January, A. D., 1940.

(Seal)

F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa. <sup>(2)</sup>

[fol. 225] (Order Directing that Depositions of George E. Preuss, et al., Be Not Taken Until Court Has Ruled on Motions on File, etc.)

Be It Remembered that on this 25th day of January, 1940, the motion and application of the Iowa-Wisconsin Bridge Company for an order that depositions be not taken until further order of this court came on for hearing and the court having examined said application and being fully advised in the premises it is hereby

Ordered that the depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner shall not be taken until this court has ruled on the motions on file mentioned in said application and then only if this court rules that said depositions may be taken.

GEO. C. SCOTT,  
United States District Judge.

Signed in Chambers at Sioux City, Iowa, January 25, 1940, for entry in the Eastern Division.

Filed in the District Court January 25, 1940.

[fol. 226] (Notice of Hearing of Motion For Order That  
Depositions Be Not Taken.)

To Casper Schenk, James R. Morford and H. W. Norman,  
attorneys for Phoenix Finance Corporation:

You and Each of You Are Hereby Notified that the defendant, Iowa-Wisconsin Bridge Company, has filed a motion in the above entitled cause, a copy of which is hereto attached and made a part hereof, and that said motion will come on for hearing and submission at Dubuque, Iowa, in the United States District Court Room on February 6th, 1940, or as soon thereafter as the same can be heard by the court.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Defendant,  
Iowa-Wisconsin Bridge Company.

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We hereby accept service of the foregoing Notice and acknowledge receipt of copy of Motion thereto attached this 25th day of January, A. D., 1940.

JAMES R. MORFORD,  
H. W. NORMAN,  
CASPER SCHENK,  
Attorneys for Phoenix  
Finance Corporation.

Filed in the District Court February 6, 1940.

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[fol. 227] Motion For Order That Depositions  
Be Not Taken.

Comes now the defendant, Iowa-Wisconsin Bridge Company and shows to this Honorable Court that a notice was served by the Phoenix Finance Corporation on the 23rd day of January, 1940, for the taking of the depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner on February 29th, 1940, in Chicago, Illinois; that this defendant immediately prepared a motion for an order that said depositions be not taken and mailed the same to the Clerk of this Court for filing and that the same was filed on the

forenoon of January 24th, 1940, and that this defendant also on the 23rd day of January mailed to Casper Schenk, counsel for Phoenix Finance Corporation, four copies thereof, together with notice of time of hearing for acceptance of service; that service of said notice was accepted on the afternoon of the 24th day of January, 1940; and the said Phoenix Finance Corporation in the afternoon of said day served another notice for the taking of the same depositions at the same place on January 29th, 1940, at ten o'clock A. M.

The defendant, Iowa-Wisconsin Bridge Company, makes the same motion with respect to said last notice and moves the Court for an order that said depositions be not taken for all the reasons set forth in the motion heretofore filed with respect to the first notice, which motion is hereby made a part hereof.

F. A. ONTJES,

W. C. GREEN,

Attorneys for Iowa-Wisconsin  
Bridge Company.

[fol. 228] State of Iowa,

Cerro Gordo County.—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I have read the statements contained in the foregoing motion and that the statements therein contained are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 24th day of January, A. D., 1940.

(Seal)

F. T. BARRETT,

Notary Public in and for  
Cerro Gordo County, Iowa.

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[fol. 229] (Hearing on Motion of Iowa-Wisconsin Bridge  
Company Asking That Depositions of Certain Wit-  
nesses Be Not Taken.)

Hearing had in Chambers, at Federal Building, Dubuque,  
Iowa, Tuesday, February 6, 1940, at 9:15 A. M.

Hon. Geo. C. Scott, Judge, Presiding.

## Appearances:

Mr. Caspar Schenk, Attorney, Des Moines, Iowa, on behalf of Phoenix Finance Corporation.

Mr. F. A. Ontjes, Attorney, Mason City, Iowa, on behalf of Iowa-Wisconsin Bridge Company.

CARL V. RILEY,  
Court Reporter,  
Dubuque, Iowa.

[fol. 230] Carl V. Riley, Certified Shorthand Reporter, under the laws of the State of Iowa, resident of Dubuque, Dubuque County, Iowa, was first duly sworn by the Court to take down and transcribe, fully and correctly, all proceedings had on said matter before the court.

The Court: Let the record show that court is in session, and the matter before the court is the several motions filed by the Iowa Wisconsin Bridge Company—the first, a motion to strike Phoenix Finance Corporation's notice of intention to take depositions and for an Order that the depositions of specified parties be not taken, filed January 24, 1940; and another motion filed, January 25th, being a similar motion. They are both assigned for today, and you may proceed with the submission.

Mr. Ontjes: If Your Honor Please: We were first served with Notice of Intention to Take Depositions in this matter about the 28th day of December, 1939. Subsequently, on the 23rd day of January, 1940, we were served with notice by the Phoenix Finance Corporation for the taking of depositions of three named witnesses: One Preuss, one Gage, and one Skoner. We filed, on the 24th day of January, 1940, under the Rules of Civil Procedure, a motion that those depositions be not taken, first, that the time for taking depositions had expired, and, second, [fol. 231] that the persons, whose depositions were sought to be taken, were not in a position to give relevant, material, or competent evidence on the issues to be tried on the question of permanent injunction.

The first notice was to take depositions on the 29th day of February, 1940, and the Phoenix Finance Corporation served us on the 24th day of January, 1940, with another

Notice to take the same depositions on the 29th day of January, 1940, of the same persons, so we filed a further motion, making the same motion to the last Notice that we had made to the taking of the depositions under the first notice, that the depositions of the witnesses named be not taken.

Since that time they have filed a Resistance to that in which they recite that these three (3) named witnesses are Accountants, and that they have examined certain records, and so forth, with respect to matters involved in the bridge case, and that they propose to testify to certain alleged accounting done by them.

We contend, Your Honor, that all of such matters have been fully and completely adjudicated by this Court on the hearing in the original case, and that none of those witnesses are in any position to give any testimony, relevant, material, and competent; and the only competent evidence in this case is what was involved in the case before Your Honor, and what is sought to be litigated in the case in Delaware.

[fol. 232] Mr. Schenk: If the Court Please: The Resistance filed by the Phoenix Finance Corporation itself fully presents our position with respect to Mr. Ontjes motion.

The witnesses, whose testimony is referred to in the schedules, under our Resistance, we can assure the Court would testify as we have set them forth as set forth in those Schedules, and we should like to have the Court consider the Schedules of testimony and the Exhibits referred to therein, including the statement and report of Ernst and Ernst, as a definite and formal tender of testimony.

In support of the Resistance to Mr. Ontjes' Motion, I think nothing that I could say would add to what appears in our Resistance, with the Schedules relating to testimony, and the references to Exhibits and the reports of Auditor, attached thereto.

We ask that the Court will take these as a tender of what we expect to show if these depositions are permitted to be taken.



The Court: As I understand Counsel and the Resistance, including the tender, there is an offer to prove by these Accountants, Chicago persons, matters bearing upon the issues that were presented and tried in the original trial of the case some years ago, and this upon the theory that the Phoenix Finance Corporation was not such a party to that case that it is bound by the decree entered therein and affirmed by the Court of Appeals. Is my assumption correct?

Mr. Schenk: Not entirely. Our position is that the former decree did not preclude the Phoenix Finance Corporation in respect to the actions now sought to be joined, which have been brought in the State of Delaware.

The Court: I may confine my statement to those items because really those are the only items in issue in this Supplemental Complaint.

Mr. Schenk: May I add to my statement, "Nor was there an Adjudication cancelling the \$50,000.00 mortgage referred to in the Supplemental and Ancillary Bill."

The Court: Yes, I think I understand Counsel's contention.

The ruling of the Court will be that the only issues material to be considered in this Supplemental Complaint is the matter of the identity of the subjects presented for litigation in the Delaware suits described in the Supplemental Complaint with the items considered on the original trial, and which it was contended in that case by the Plaintiff entered into and were refunded by the issue of bonds aggregating \$200,000.00, that the identity of those items must be determined by the record in the original trial, and the Court being of the opinion that the Phoenix Finance Corporation is in all respects bound by that decree because [fol. 234] of its presence on the record in that case, and because of its succession to the previous Corporation all of whose acts and conduct were shown to have been ratified by the Phoenix Finance Corporation. The ruling herein must be in favor of the two motions.

The motions will each be sustained, and an Order granted finding and directing that the depositions in question will

not be material, that the witnesses, whose testimony is noticed to be taken, are incompetent to contravene or overcome the record of the original trial.

Exceptions will be reserved to the Phoenix Finance Corporation, and an Order will be prepared and entered to that effect, and Counsel for the Phoenix will be forwarded a copy.

Mr. Schenk: Will Your Honor advise the Reporter as to filing a copy of the notes taken?

The Court: I will grant leave to file a transcript of the proceedings here this morning. A transcript of the proceedings here this morning may be made and filed, and made a part of the record. You will arrange for that, of course.

Mr. Schenk: Yes, sir. Thank you.

Mr. Ontjes: Has Your Honor the time to try this on the Permanent Injunction?

[fol. 235] The Court: I am anxious to have this matter disposed of as early as possible. However, I see no prospect of trying the matter before the latter part of March. I have a very involved Patent Case, which will within a few days be submitted. The briefs are now being filed. I have quite a number of other matters submitted within the last week, and some of them will require considerable study. I have also a matter that is not altogether pleasurable that I haven't heretofore had, and that is, to give attention to the matter of income tax, which will take considerable time between now and the 15th of March. As soon as I get a little more light on the work I will communicate with Counsel. If it is possible to try the case in March I shall be glad to do that. Let me ask you both, that inasmuch as the trial will be confined to matters in the old record, may not the trial be had at Sioux City?

Mr. Ontjes: Entirely satisfactory so far as we are concerned.

Mr. Schenk: I don't think it will make much difference, but I will have to consult my associates. The case will doubtless be tried by Mr. Morvard of Wilmington, Delaware.

The Court: It is simply a matter of a little more travel for him.

[fol. 236] Mr. Schenk: It wouldn't make any material difference that I can see.

The Court: It will save me two days.

Mr. Schenk: I think we can agree on that nicely.

Note: Mr. Ontjes inquired of the Court as to who should prepare the Order of Court with respect to this Motion, and the Court requested him (Mr. Ontjes) to prepare it, upon receipt of a copy of the Transcript of this hearing, which transcript was filed in the office of the Clerk of the United States District Court, For the Northern District of Iowa, Eastern Division, at Dubuque, Iowa, this 6th day of February, A. D. 1940, at 2.15 P. M.

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[fol. 237]                      Certificate of Reporter

I, Carl V. Riley, upon my Oath depose and say that I am the same Carl V. Riley, who was sworn by the Court in the above entitled cause to take down in shorthand, and completely and accurately transcribe my said shorthand notes upon the hearing had in said cause this 6th day of February, A. D. 1940, at the Federal Building, Dubuque, Iowa, before the Hon. George C. Scott, Judge, United States District Court; and that the above and foregoing transcript of my said shorthand notes is such true, complete, and correct translation thereof.

CARL V. RILEY,

Subscribed and sworn to before me this 6th day of February, A. D. 1940.

Deputy Clerk

HAROLD N. HILBERT,

(Seal)

Clerk, District Court,  
Dubuque County, Iowa.

Filed in the District Court February 6, 1940.

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[fol. 238] (Resistance of Phoenix Finance Corporation to Motions for Order that Depositions of George E. Preuss, et al., be not Taken, etc.)

Now comes Phoenix Finance Corporation, impleaded as a party complainant by order of Court in the above stated cause, and defendant in the Supplemental and Ancillary Bill of Complaint filed by Iowa-Wisconsin Bridge Company, the original defendant in said cause and the complainant in said Supplemental and Ancillary Bill of Complaint, and resists the following motions of Iowa-Wisconsin Bridge Company heretofore filed in the above stated cause:

[fol. 239] First: Motion verified January 23, 1940, wherein said Iowa-Wisconsin Bridge Company moves the Court as follows with respect to a notice of Phoenix Finance Corporation for the taking of the depositions of certain witnesses:

“(a) To strike from the files the notice of intention to take depositions filed by the Phoenix Finance Corporation.

“(b) To enter an order that the depositions of the parties therein specified shall not be taken.

“(c) To enter an order that the depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner, specified in the Phoenix Finance Corporation's notice to take depositions shall not be taken.

“(d) To set and to proceed with the hearing on permanent injunction.”

Second: Motion verified January 24, 1940, wherein relief similar to that stated in Paragraph First above was sought with respect to the notice of Phoenix Finance Corporation for the taking of depositions of certain named witnesses in Chicago, Illinois, on January 29, 1940, at 10:00 o'clock A. M.

As grounds of resistance to the said motions Phoenix Finance Corporation says:

1. This cause has not been tried on its merits with respect to said Supplemental and Ancillary Bill of Complaint as amended of Iowa-Wisconsin Bridge Company and the Answer and Counterclaim of Phoenix Finance Corpora-

tion thereto. The time for taking depositions has not expired for the reason that pursuant to Rule 5 of the Rules of the United States District Court for the Northern District of Iowa, Phoenix Finance Corporation, within ten days after the pleadings were closed on said Supplemental and Ancillary Bill of Complaint as amended and said Answer and Counterclaim thereto, filed with the Clerk of this Court a statement of intention to take depositions for use [fol. 240] at the trial of this Cause, naming the witnesses and their addresses and stating the particular occasion for taking such testimony in such form, as by reference to said notice filed in this cause will more fully appear. Said depositions of witnesses on behalf of Phoenix Finance Corporation were also proposed to be taken pursuant to Rules 26, 28, and 30 of the Rules of Civil Procedure for the District Courts of the United States, wherein it is provided inter alia that the testimony of any person may be taken at the instance of any party, by deposition upon oral examination at any time after an answer has been served and without leave of Court.

2. Albert Penn is an officer and director of Phoenix Finance Corporation and resides at Goshen in the State of Indiana. John A. Thompson is a director, but not an officer, of Phoenix Finance Corporation and resides at St. Petersburg in the State of Florida. Neither of said witnesses is in the Northern District of Iowa or within a hundred miles of the place of the trial of this cause, or otherwise within the jurisdiction of this Honorable Court so as to be subject to the service of subpoena. Phoenix Finance Corporation has no assurance that said witnesses, or either of them, will be available to testify in person at the trial of this cause and desires to take their testimony by deposition as provided by the said rules of Civil Procedure, for use in the event said witnesses, or either of them, for any reason whatsoever, are not available in person at the trial. There is no statute or rule of Court requiring a party litigant to produce personally at the trial of a cause non-resident witnesses who are not subject to subpoena, or are otherwise unavailable, even though such witnesses are officers and/or directors of a corporate

party. There is no statute nor rule of court prohibiting, or [fol. 24]] in any way limiting, the right of Phoenix Finance Corporation to take the deposition of said witnesses in this cause, and, on the contrary, the right to take such depositions is specifically provided by the Rules of Civil Procedure governing the practice in the District Courts of the United States. By the depositions of the said Albert Penn and John A. Thompson Phoenix Finance Corporation expects to prove as evidence in this cause on its behalf, the facts stated in the Schedules attached hereto and made parts hereof, entitled, "Testimony of Albert Penn", and "Testimony of John A. Thompson", respectively, and the said Albert Penn and John A. Thompson if called as witnesses in this cause would testify as shown by said Schedules.

3. George E. Preuss, Edgar S. Gage, and Lee J. Skoner are qualified and certified public accountants. Each of said persons at various times has examined the books and records either of Phoenix Finance Corporation or of Iowa-Wisconsin Bridge Company, or both, and has checked and verified said books and records with the original records of all banking institutions and other corporations with or through which each of said corporations from time to time transacted their financial affairs, for the purpose of ascertaining the indebtedness, if any, of Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation, the extent thereof, how such indebtedness arose and the exact nature of all financial transactions between said corporations. Phoenix Finance Corporation denies that George E. Preuss, Edgar S. Gage, and Lee J. Skoner are not or that either of them is not, in a position to give competent, material and relevant evidence with respect to the issues in this cause. By the depositions of said witnesses, Phoenix Finance Corporation expects to prove the facts stated [fol. 242] in the schedules attached hereto and made parts hereof, entitled, "Testimony of George E. Preuss", "Testimony of Edgar S. Gage", and "Testimony of Lee J. Skoner", respectively, and said persons, if called as witnesses in this cause, would testify as shown by said respective schedules. In particular, the witnesses George E. Preuss and Lee J. Skoner will identify and prove as an exhibit on behalf of Phoenix Finance Corporation in this



cause, a certain Report of Special Examination of the accounts of Iowa-Wisconsin Bridge Company entitled, "Receipts and Disbursements, Iowa-Wisconsin Bridge Company—Lansing, Iowa, November 1, 1930, to September 25, 1933", as prepared by Ernst & Ernst, Accountants and Auditors, Continental Illinois Bank Building, Chicago, Illinois, (by which auditing firm the witnesses Preuss and Skoner are employed) under date of January 17, 1940, a signed original of which Report of Special Examination is filed with, and, by this reference thereto, made a part of this Resistance.

One of the issues in this cause, as such issue is defined by the Supplemental and Ancillary Bill of Complaint as amended, and by the Answer and Counterclaim of Phoenix Finance Corporation, is the good faith of Phoenix Finance Corporation in the institution of the various actions at law and in equity described in numbered Paragraph 7, of the Supplemental and Ancillary Bill of Complaint, whether or not the claims of Phoenix Finance Corporation with respect to said causes of action are or are not just and whether or not said causes of action were instituted for the purpose of harrassing, vexing, and annoying, and destroying the business of Iowa-Wisconsin Bridge Company, or whether the same were instituted for the bona [fol. 243] fide purpose of enforcing just claims and collecting just obligations. Phoenix Finance Corporation further says that among the principal issues in this cause as defined by the pleadings are the following, viz.: (1) whether or not this Court, sitting as a Court of Equity, will permit Iowa-Wisconsin Bridge Company to retain the benefits and advantages of loans and advances made to it and for its account by Phoenix Finance Corporation and to retain certain shares of stock transferred to it by Phoenix Finance Corporation for bonds which this Court by a prior decree has purported to invalidate, (2) whether or not Iowa-Wisconsin Bridge Company, in filing its said Supplemental and Ancillary Bill of Complaint, has done equity with respect to Phoenix Finance Corporation, and (3) whether Iowa-Wisconsin Bridge Company comes into this Court in this cause with clean hands.

4. Phoenix Finance Corporation denies that it is attempting to take the depositions of said witnesses with re-

spect to matters stricken by order of court from its Answer and Counterclaim and, on the contrary, avers that all of the evidence of each of said witnesses is material to the issues in this cause as defined by the pleadings. Phoenix Finance Corporation further denies that it is attempting to delay the hearing on the Supplemental and Ancillary Bill of Complaint, or that it is attempting in any manner to harrass or annoy the Iowa-Wisconsin Bridge Company. On the contrary, Phoenix Finance Corporation avers that it is proceeding with all expedition to have said cause tried on the merits thereof at the earliest opportunity and that, by the taking of said depositions and by the presentation of testimony and exhibits on its behalf, it is seeking only to [fol. 244] assert its rights and to protect its interests as a party defendant to said Supplemental and Ancillary Bill of Complaint.

5. For the reasons stated in Paragraph 1 above Phoenix Finance Corporation says the time for the taking of depositions mentioned in the notice has not expired and will not expire before said depositions can be taken.

6. Phoenix Finance Corporation prays that the Schedules of the proposed testimony of Albert Penn, John A. Thompson, George E. Preuss, Edgar S. Gage and Lee J. Skoner, with any exhibits thereto attached, and the Report of Special Examination by Ernst & Ernst, which said Schedules, Exhibits and Reports of Special Examination are referred to and made parts of this Resistance, be taken and considered as offers of evidence and exhibits in this cause on behalf of Phoenix Finance Corporation, to the same effect as though evidence and exhibits of like tenor and effect were offered at the trial; and that this Court shall rule upon the admissibility of said evidence and exhibits and every part thereof in conformity with the rules of evidence and the proper issues of this cause.

JAMES R. MORFORD,  
HAROLD W. NORMAN,  
CASPAR SCHENK,

Attorneys for Phoenix Finance Corporation.

[fol. 245] State of Delaware,  
County of New Castle—ss.

I, James R. Morford, being first duly sworn on oath depose and say that I am one of the attorneys for Phoenix

Finance Corporation and have read the statements contained in the foregoing Resistance to Motions and know the contents thereof and that the statements therein contained are true as I verily believe.

JAMES R. MORFORD.

Subscribed and sworn to before me by the said James R. Morford, this 31st day of January A. D. 1940.

G. SELLERS SMITH,  
Notary Public in and for  
New Castle County.

(Seal)

[fol. 246]

Schedule

Testimony of ALBERT PENN

Albert Penn is president of the Penn Electric Switch Company, Goshen, Indiana, and has been president of the Phoenix Finance Corporation, a Delaware corporation, since July 8, 1939, and director of said corporation since March 1932.

He was present in the directors' meeting from time to time when the financing of the Iowa-Wisconsin Bridge Company in connection with the construction of the Black Hawk Bridge was discussed and approved. He participated in authorizing the trustees to foreclose the mortgage deed of trust following default by the Bridge Company in payment of principal and interest on its bonds.

He participated in board meetings in which the adverse decision of the United States District Court was reported and discussed. It was understood that the validity of the mortgage lien had probably been adjudicated but that Phoenix Finance Corporation's interest in the indebtedness had not been presented in evidence in the case, was not within the issues thereof and had not been adjudicated against Phoenix. It was then decided by the Board that the cash loans to the Bridge Company of approximately \$100,000 and over \$50,000 interest thereon should be collected in courts having jurisdiction of the parties and of the causes. Thereupon James R. Morford, attorney, of Wilmington, Delaware, was authorized to institute the specific actions at law set forth in numbered paragraph 7 of

the Supplemental and Ancillary Bill of Complaint in this cause.

[fol. 247] The witness knew of his own knowledge that these large sums of money were owing to Phoenix Finance Corporation and that the actions authorized and commenced in Delaware were in good faith and not for the purpose of harrassing, vexing or annoying Iowa-Wisconsin Bridge Company. There is justly due to Phoenix Finance Corporation for loans to Iowa-Wisconsin Bridge Company a sum in excess of \$150,000 (including interest). For the specific detail of this indebtedness and the exact amount thereof, reference is made to the Report of Special Examination (including schedules of all cash receipts and disbursements) of Iowa-Wisconsin Bridge Company, made by Ernst & Ernst, certified public accountants, dated January 17, 1940, filed as an exhibit with this Resistance.

The witness participated in the Phoenix board meeting which authorized Ernst & Ernst, certified public accountants to make a thorough examination of the accounts of the Bridge Company and of the Phoenix Finance Corporation and all related accounts, and to report and certify to Phoenix the result of such examination. The examination was made and a full and complete report was rendered as above stated. Upon the basis of the reported results of such special examination the witness, as president of Phoenix Finance Corporation, approved and authorized James R. Morford, attorney, of Wilmington, Delaware, to proceed with such legal actions as were necessary and advisable to recover said sums from Iowa-Wisconsin Bridge Company.

The witness will testify that there are no valid set-offs or counter-claims of Iowa-Wisconsin Bridge Company against Phoenix Finance Corporation with respect to the above-mentioned indebtedness.

[fol. 248] With respect to the loan by Phoenix Finance System Inc. to Iowa-Wisconsin Bridge Company in the sum of \$50,000 on or about March 10, 1931 and the mortgage given to secure the same, and the further loan of \$9,000 by Phoenix Finance System Inc. on or about November 10, 1931 to the Bridge Company to pay the lien of

Kremer & Hog, witness refers to a statement of the facts thereof as contained in the Schedule of the "Testimony of John A. Thompson", a part of this Resistance. Witness will testify to like effect.

With respect to the claim of Phoenix Finance Corporation for the return to it of 517 shares of Class "A" Bridge Company stock, the origin of the right of Phoenix in this matter and the absence of any valid adjudication heretofore with respect to said claim and demand, witness in like manner, refers to a statement of the facts thereof as contained in the Schedule of the "Testimony of John A. Thompson", a part of this Resistance. Witness will testify to like effect.

With respect to the \$10,000 loan of Phoenix Finance System Inc. to the Bridge Company on or about September 24, 1931, the \$11,262.71 of United States Treasury certificate sold by Phoenix Finance System Inc. to the Bridge Company on or about December 24, 1931 but for which payment was never made to Phoenix Finance System Inc., and the \$17,735.19 cash loaned to the Bridge Company by Phoenix Finance Corporation during 1932 and 1933, as evidenced by four notes, witness in like manner refers to a statement of the facts in connection therewith as contained in the Schedule of the "Testimony of John A. Thompson", a part of this Resistance. Witness will testify to like effect.

[fol. 249] The witness participated in various conferences of officers and directors of Phoenix Finance Corporation at which ways and means of recovering said loans were discussed. As a result of such conferences it was decided that said \$50,000 mortgage referred to above and in the Supplemental and Ancillary Bill of Complaint, should be recorded for the proper protection of Phoenix Finance Corporation against possible third party interests. Thereupon, said mortgage was recorded in the County of Crawford, State of Wisconsin, and in the County of Allamakee, State of Iowa. Said recordings were made in good faith, solely for the purpose of protecting the interests of the Phoenix Finance Corporation and without any intent to harass, vex or annoy the Iowa-Wisconsin Bridge Company, to becloud the title of said company, or to [interere] with

the rights of the United States Court or the Receiver thereof.

The witness was present as a proxy holder, representing the stock interests of Phoenix Finance Corporation, owners of about 25% of the voting capital stock of Iowa-Wisconsin Bridge Company, at a stockholders' meeting of the Bridge Company held at Lansing, Iowa, on July 8, 1939. He was present throughout the entire meeting and heard and understood all of the addresses and remarks of John A. Thompson at said meeting. A true and complete report of all statements made by John A. Thompson at said meeting with respect to any pending or contemplated litigation against the Bridge Company, as taken down and transcribed by Vernon L. Grant, Certified Shorthand Reporter, of Des Moines, Iowa, is attached hereto marked Exhibit "A" and made a part of this Statement. Witness [fol. 250] will corroborate and confirm the accuracy and completeness of said report.

[fol. 251]

#### Exhibit "A"

Excerpts of record of proceedings of the Annual Meeting of Class "B" Stockholders of Iowa-Wisconsin Bridge Company held at the office of the Company, Lansing, Iowa, July 8, 1939, as reported by Vernon L. Grant, Certified Shorthand Reporter, 417 Court House, Des Moines, Iowa.

. . . . .

Mr. John A. Thompson: Mr. Chairman, In view of the fact that the outcome of this ballot will be viewed very carefully, or should be viewed very carefully by the record of those directors who are now seeking re-election, I think it is pertinent and important to review and answer some of the general accusations that have been made and to state just briefly some of the things that I know that every stockholder here is interested in reviewing. I don't mean to review it one sidedly, I mean general discussion from all sides.

You have had very little opportunity to know what the view of the Phoenix Company of the struggle of the past



six years has been and is now. I think for the reason that most of the present directors have been opposed to Phoenix and that therefore, necessarily, their actions in the future would be the same, that you should know before you vote for them or for anybody, what they stand for, particularly on the subject that I am now going to present to you.

[fol. 252] Mr. Ontjes has stated here and he stated in the December meeting, that the litigation between Phoenix and the Bridge Company was all over.

Now in the first place there never was any litigation between Phoenix and the Bridge Company. A great many of you folks think that it is a strange statement, because you have never heard it before. A great many of you don't realize that there never was a Phoenix witness or one bit of Phoenix evidence introduced in any record in connection with any of this litigation until June 15, 1939, in a case in Delaware. That case is not yet determined, so that it would be unwise for anyone to predict its outcome or to discuss the merits of that case.

But we can discuss some of the fundamental facts that underlie the litigation about which Mr. Ontjes has said was determined.

In the first place, you must understand that the litigation involved a mortgage, a mortgage deed of trust between this Bridge Company, of which we own one fourth of the stock, don't forget that part of it, and the Bechtel Trust Company of Devenport. The Bechtel Trust Company was the Trustee and the lawsuit was started by them as a foreclosure action. Now Mr. Ontjes, if you will please not interrupt, I will give you freedom of speech if you will not interrupt me.

Mr. Ontjes: All right, go ahead.

[fol. 253] Mr. Thompson: Mr. Ontjes will say to you that the Bechtel Company started the action at the instance of the Phoenix Finance Corporation. Now all of you who have had any experience with any kind of a corporation know that the only way a foreclosure action can be started by the trustee, is by assurance from some bondholder that the expenses will be guaranteed and the demand must be made

according to the terms of the trust deed before they can start foreclosure, notwithstanding it is their foreclosure, for the benefit of all the bondholders and they have no right under the sun to represent any bondholder except in matters that pertain to all the bondholders alike.

In other words, if there is a controversy that involves one set of bondholders and which may, by its very nature be adverse to the other bondholders, it is a matter the trustee cannot handle.

In this case, Mr. Ontjes will tell you that he thinks the trustee represented Phoenix in all of the charges of fraud that he made and I want to call your attention to the fact that he cannot point out, in the sixteen hundred pages of printed record in this case, one single instance wherein any witness ever said that there was any fraud in this case.

He has alleged fraud against an interlocking directorate, two boards of directors, who had some person in common. He has based his entire case upon the presumption that when you charge an interlocking directorate with fraud, that they are presumptively fraudulent and that without any further proof in the record, that fraud is presumed and will be found by the decree of the court.

[fol. 254] That is good law, but it is not a thing that is generally or commonly known by people, such as the people in this meeting. It is good law because when two groups of directors carry on any kind of an inter-company transaction, it is only fair and reasonable that they should come into court with clean hands and show that they were not dishonest. In other words, we revert to the old English law that says when you are charged, you are guilty.

Now in this case, they have never proved any fraud and I defy anyone to point to any place in this record, where any witness ever said there was anything fraudulent.

Phoenix at no point ever introduced any evidence as yet. We have tried for years to get evidence into the record, we have tried to get Ernst & Ernst, Certified Public Accountants on the stand, but we have never been able to. And they resisted. Why? Because they had us in a legal trap and they thought they could take advantage of us and beat

us out of the money that went into the building of this bridge.

Now I know that there is not a stockholder sitting in this room that is so dirty, so downright dishonest as to try to take advantage of anybody in that fashion if they knew the facts and I am not here to change your minds, I just want you to have opportunity to know the facts and if you don't use that opportunity, it is purely up to you.

Now in the Federal Court, the Phoenix Finance Corporation was very properly excluded from the introduction of evidence because it is a Delaware Corporation. You cannot bring two Delaware Corporations into Federal Court [fol. 255] with a controversy between those two companies and that is what Mr. Ontjes has tried to do here.

We are not blaming Judge Scott or the Federal Court that entered the decree against us, because the allegations in the case set up a charge of fraud and I will admit there was never any proof introduced in the record, because there was not in fact any evidence from us.

Now I don't want you people to be deceived into believing that there was fraud or that we are the only ones that are carrying on the litigation. I assure you very clearly that all we are trying to do is to recover the money we put in there. We are not in here to try to collect \$50,000 in attorney fees for something we never put in and I submit to you that even if Mr. Ontjes and his group were successful in eliminating the mortgage against this bridge and it was entirely and forever eradicated, that that has nothing to do with the debt that still remains owing to Phoenix. They have eradicated the mortgage that was made to Bechtel Trust Company, but that is not eradicating the debt. That is owed for cash paid in by the Phoenix Finance Corporation.

Now if there was any fraud on the financial facts in this case, why do they resist the presentation of the Certified Public Accountant to the court or to this meeting, as they kept us here until eleven o'clock on December 6, when nearly one hundred people stayed here, sat in here and waited patiently hour after hour when they were trying to get a presentation of this matter to this body, merely be-

cause they didn't want these facts to be presented. I defy any of you to answer that particular point.

[fol. 256] Now this indebtedness can be properly presented and evidence can be put in down in the Delaware Court. That is now being done. There are six cases down there now that will be carried on through the courts in the next few months, the one I have just described was heard—it is all finished except the decision of the court, perhaps a brief due on the 13th and a decision of the court which they promise by the first of August and five others to follow.

Now my contention is now and always has been, that if a group of business men owning stock in this bridge company would sit down around the table with their own certified public accountants or any other men that has any knowledge of these things and would take the time to dig into it, they would never go to Delaware or any place else and spend good money to defend this kind of action.

Anyone can see, to give you an idea of how far this man is willing to go, representing you people to try to defraud the Phoenix Finance Corporation, I show you that in one instance there was 517 shares of preferred stock traded for bonds. At least that is his claim, that it was traded. Let it go at that. So he comes in and invalidates the bonds and says, "We are going to keep the stock; we are going to keep both the stock and the bonds." There is no charge that the 517 shares of stock were not paid for; there is no claim that the stock was not owned by the Phoenix Finance Corporation, but they say, "Because you are a crook, that we are going to keep both the stock and the bonds. We are not going to let you have either one of them."

[fol. 257] If we would go into court on that point, there is no doubt about what a court would do about that. There is not any question in the world as to what you people would decide. In fact, if I had a private deal with you and gave you \$50,000 worth of stock for \$50,000 worth of bonds and the bonds turned out to be worthless, naturally you would say "Here is the stock back." You wouldn't do that, even if you had such a legal trap by which you could defeat the 1087 stockholders of the Phoenix Finance Company that put this money in here.

Now the question is, are you going to support in this election, the kind of a director that will go out, buy this kind of fraud and misrepresentation; are you going to re-elect for the coming year again directors that will hire that man and support him, or are you going to try an honest bunch of directors on this board? (Applause)

[fol. 258]

Schedule.

Testimony of JOHN A. THOMPSON.

He is a stockholder and director of Phoenix Finance Corporation but is not an officer thereof. He refers to the Schedule of the "Testimony of Albert Penn", a part of this Resistance, and will testify to like effect.

He was president of Iowa-Wisconsin Bridge Company at the time of all the transactions hereinafter mentioned. He had personal charge of the books of account thereof and is personally acquainted therewith. He is a qualified bookkeeper and understands accounting.

He has carefully examined the Report of Special Examination of the financial affairs of Iowa-Wisconsin Bridge Company, made by Ernst & Ernst, certified public accountants, under date of January 17, 1940, an exhibit to this Resistance, and the same in all respects accurately and truly reflects the accounts and transactions of Iowa-Wisconsin Bridge Company as the same appear in its books of account and as the same are substantiated and verified by the original records of all banking institutions with or through which said corporation at the times therein mentioned transacted its business, and by the books of account and records of the several persons, firms and corporations referred to in said Report of Special Examination.

The cause of action referred to in paragraph 7 (a) of the Supplemental and Ancillary Bill of Complaint is based upon the indebtedness of Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation because of cash [fol. 259] loaned and advanced, as shown by item of January 20, 1933 appearing on page 21 of the Cash Receipts of said Report of Special Examination, and further appearing

under the same date on Schedule D of said Report. A part of said transaction is [further] evidenced by item under date of December 15, 1932, appearing on page 20 of the Cash Receipts Schedule of said Report and item of the same date on Schedule D thereof.

Said cause of action last above referred to has been tried on its merits before the Judges of the Superior Court of the State of Delaware, in and for New Castle County. Iowa-Wisconsin Bridge Company appeared in said cause generally and pleaded to the plaintiff's declaration. Among other pleas so filed by Iowa-Wisconsin Bridge Company was the plea of res adjudicata based upon the decree of this court of December 1, 1936 and the purported effect thereof. After trial said case was argued and briefed by counsel for the respective parties and is now pending decision by said Superior Court.

The cause of action referred to in paragraph 7 (c) of the Supplemental and Ancillary Bill of Complaint, and the claims of Phoenix Finance Corporation with respect thereto, are identified by said Report of Special Examination on Schedule D thereof, by an item of \$500 under date of December 31, 1932, on item of \$12,110.19 under date of July 7, 1933, and upon the ledger account of the Phoenix Finance Corporation in the books of the Iowa-Wisconsin Bridge Company.

[fol. 260] Said cause of action last above mentioned is pending in the Superior Court of the State of Delaware, in and for New Castle County. Iowa-Wisconsin Bridge Company, the defendant, has appeared generally therein, has pleaded to plaintiff's declaration and among its said pleas is the plea of res adjudicata, based upon the decree of this court of December 1, 1936 and the purported effect thereof.

The cause of action stated in paragraph 7 (d) of the Supplemental and Ancillary Bill of Complaint, and the claims of Phoenix Finance Corporation with respect thereto, are identified by said Report of Special Examination, on Schedule C thereof, by a cash item of \$10,000, under date of September 24, 1931, and the non-cash item (U. S. Treasury Certificates) in the sum of \$11,262.71, under date of December 24, 1931. Said cash item of \$10,000 also appears on



page 19 of the Schedule of Cash Receipts under date of September 24, 1931, and both of said items appear further on the ledger account of the Phoenix Finance Corporation, in the books of the Iowa-Wisconsin Bridge Company.

Said cause of action last above mentioned is pending in the Superior Court of the State of Delaware in and for New Castle County. Iowa-Wisconsin Bridge Company, the defendant, has appeared generally therein, has pleaded to plaintiff's declaration and among its said pleas is the plea of res adjudicata, based upon the decree of this court of December 1, 1936, and the purported effect thereof.

The cause of action referred to in paragraph 7 (e) of the Supplemental and Ancillary Bill of Complaint, is based [fol. 261] upon two \$500 Series "B" Bonds of the Iowa-Wisconsin Bridge Company, not purchased from the Bridge Company by Phoenix, but acquired from innocent holders for value by the Phoenix Finance Corporation subsequent to the commencement of the foreclosure action. The validity of said bonds was not and could not have been adjudicated in this cause for the reason that the owner or owners thereof were not parties thereto or otherwise subject to the jurisdiction of the court.

Said cause of action last above mentioned is pending in the Superior Court of the State of Delaware, in and for New Castle County. Iowa-Wisconsin Bridge Company, the defendant, has appeared generally therein, has pleaded to plaintiff's declaration and among its said pleas is the plea of res adjudicata, based upon the decree of this court of December 1, 1936 and the purported effect thereof.

Witness will also testify with respect to a claim of Phoenix Finance Corporation in addition to the cash loans and advances above mentioned. This is the claim for the return to Phoenix Finance Corporation of 517 shares of Class "A" stock of the Bridge Company and is the subject matter of the cause of action in the Court of Chancery of the State of Delaware referred to in paragraph 7 (b) of the Supplemental and Ancillary Bill of Complaint in this cause. In this proceeding Phoenix Finance Corporation is seeking to recover said 517 shares of Bridge Company stock which was owned by it and exchanged for certain bonds of Iowa-

Wisconsin Bridge Company, which this court by its decree has purported to invalidate. The Bridge Company has refused to return said 517 shares to Phoenix Finance Corporation in spite of said purported invalidation.

[fol. 262] Witness will identify the obligations of the Bridge Company to Phoenix, secured by a \$50,000 mortgage (referred to in the Supplemental and Ancillary Bill of Complaint) as appearing on said Report of Special Examination, by two items of March 10, 1931, the one in the sum of \$35,000 and the other in the sum of \$15,000, as the same appear on page 7 of Schedule C of said Report, and on page 15 of the Schedule of Cash Receipts of said Report, under date of March 10, 1931.

He will testify with respect to the giving of said mortgage to Phoenix Finance System Inc. by the Bridge Company to secure said advances and the later conditional exchange of this mortgage for bonds of the Bridge Company that were a part of \$97,000 worth of bonds issued on March 15, 1932 and purportedly invalidated by decree of this court. He will prove an agreement between the Bridge Company and Phoenix upon the conditions of which said mortgage was exchanged for bonds. He will establish by such testimony and proof, that, upon the invalidation of said bonds, the mortgage reverted to its original status as security for valid and subsisting obligations of Bridge Company to Phoenix Finance Corporation as successor in interest to Phoenix Finance System Inc., including the obligations above mentioned and the further advance or loan hereinafter referred to.

He will also testify with respect to a further loan of \$9,000 by Phoenix Finance System Inc. to the Bridge Company on or about November 10, 1931 for the purpose of paying and satisfying a mechanic's lien under Iowa law upon the property of the Bridge Company in favor of Kremer & Hog, contractors. Said loan will be identified by him on said Report of Special Examination on page 19 [fol. 263] of the Schedule of Cash Receipts under date of November 11, 1931 and on Schedule C of said Report (page 7) under date of November 10, 1931. Witness, by his testimony, will refer to the terms and conditions of said \$50,000 mortgage of record as an exhibit in this cause, with respect

to the [extention] of the lien thereof to cover future advances of the character above mentioned, and by his testimony will establish that the covenants of the Bridge Company in this respect have never been adjudicated or held invalid in this cause and thereby will establish that the granting of the prayers of the Supplemental and Ancillary Bill (in this particular) would, in effect, deprive Phoenix Finance Corporation of its property and property rights without due process of law.

True and correct copies of the letters of November 23, 1938 and June 12, 1939, referred to in paragraph 10 of the Supplemental and Ancillary Bill of Complaint are attached hereto, marked Exhibits "A" and "B" respectively, and will be identified as having been written by this witness to the addressees therein named.

The June 12, 1939 letter was a reply and part of an exchange of correspondence between Mr. Fred Bierman and the witness in an effort to arrive at a method of combating the attempt of Mr. Ontjes to collect \$50,000 or more of attorney's fees from the Bridge Company for services which were regarded by some of the stockholders as of no value, but of considerable detriment and irreparable damage to the Bridge Company, if in the end the true and honest debts of the Bridge Company to Phoenix Finance Corporation must finally be paid. Witness regarded this correspondence as being the rightful privilege of one stockholder to address and discuss with another stockholder the affairs of a corporation in which they had an interest. This letter was also intended to promote a program for the appointment of an impartial and qualified committee to examine into the financial condition and debts of the Bridge Company and to recommend only such legal procedure as could not be avoided by a peaceful conference between this committee and the creditors of the Bridge Company.

The letter of November 23, 1938 was addressed by the witness for and on behalf of the large stock interest of Phoenix in the Bridge Company to other stockholders, for the purpose of bringing to their attention the matters to be discussed and voted upon at the annual stockholders' meeting to be held on December 6, 1938, and to point out to the

stockholders the inequality of distribution of directors, which at that time gave almost the entire board to an Ontjes' controlled group and denying representation on the board to the holder of the largest investment in the company. The witness considered that any stockholder had the privilege to address his fellow stockholders on important subjects of this nature to be brought up in an annual meeting of stockholders.

Witness will, by his testimony, deny that all matters and differences between the Bridge Company and Phoenix Finance Corporation and Phoenix Finance System Inc. were fully settled, adjudicated and determined by the decree of this Court and the Circuit Court of Appeals and while the questions as to the construction and effect of [fol. 265] said decrees, the scope of the issues of the cause and the status of the parties, is a matter of law rather than of fact, the witness will, in his testimony, refer particularly to the claim of Phoenix Finance Corporation against the Bridge Company for the value of \$5000 worth of bridge toll tickets which claim is the subject of the litigation in the Superior Court of Delaware referred to in paragraph 7 (f) of the Supplemental and Ancillary Bill of Complaint. Witness by way of further denial of this allegation of the Supplemental and Ancillary Bill of Complaint in this respect will, in his testimony, refer to the claim of Phoenix for the return of said 517 shares of Bridge Company stock, above referred to, and mentioned in paragraph 7 (b) of said Supplemental and Ancillary Bill.

Witness will, by his testimony, deny that the 517 shares of Bridge Company stock above mentioned were surrendered to Bridge Company and cancelled, but of his own knowledge will testify that the same were transferred to the name of Bridge Company and were and still are carried on the books of Bridge Company as Treasury stock.

Witness will deny that he made an assertion on or about December 6, 1938 as alleged in paragraph 9 of the Supplemental and Ancillary Bill of Complaint.

Witness will further testify that Phoenix Finance Corporation is the successor in interest to Phoenix Finance

System Inc. and that any and all claims of Phoenix Finance System Inc. mentioned in this statement or in the statement of Albert Penn are now the claims and property of Phoenix Finance Corporation.

[fol. 266]

Exhibit A.

To Stockholders of  
Iowa Wisconsin Bridge Co.  
Lansing, Iowa

November 23, 1938

Fellow Stockholder:

You must attend the stockholders meeting at Lansing, Tuesday, December 6th at 1:30 P. M. if at all possible. It is important for the protection of your stock investment that an honest and representative group of real business men be elected to manage the affairs of the Bridge Company.

Although I will vote over 800 shares, I will not be a candidate under any circumstances.

The Irene Bell-Ontjes group will undoubtedly try to elect their present members, namely: Tom Bakewell of Lansing, H. G. Foote of Minneapolis, F. D. Kendrick and George Dittman of St. Paul, H. A. Schremser and Fred Bierman of Decorah, and Irene Bell of Mason City, for their new slate, and Fred Ontjes of Mason City for general counsel.

Most of you know Tom Bakewell, with his \$265. investment, well enough to know that he is not the choice of the large list of investors in Alamakee County, representing \$143,500. Mr. Foote, I think, fairly represents the Minneapolis group and he has a large investment. Kendrick and Dittman both have large investments, and it is my personal opinion that they, as well as Mr. Foote, are honest and reliable insofar as they have any knowledge of the affairs of the Bridge Company. However, the total investment in that Minneapolis-St. Paul territory is \$87,600, which would scarcely rate one full director, and certainly does not justify three directors.



[fol. 267] Schremser and Bierman of Decorah may or may not represent a fair choice of the \$68,800 invested in that community. Schremser has three shares and his wife also has three shares. Bierman is able and honest, but he has only one share, so it would seem that their desire to have the job of directorship could hardly be justified simply to protect such a small investment. A man with real money in this bridge should be chosen from the Decorah territory, and you have five large investors in Decorah to choose from: H. S. Smith, William Hilleman, G. O. Quелley, John H. Johnson, and the Annundsen interests. I don't know them personally, but I understand they are all reliable.

The Mason City community has less than three per cent of the total outstanding stock, which ordinarily would not entitle them to a director.

It does not take a very smart stockholder to know why Lawyer Ontjes of Mason City is fighting for control of the bridge and its cash toll income, nor why he resorts to the reprehensible trick of giving gullible stockholders one dollar in cash to sign a long written contract.

Southern Minnesota has about five times as much stock as the Mason City territory. It should have representation. Neither is there any representation for Fayette County with \$13,100 investment, or for Osago, Cresco, Bellevue, and Dubuque, totaling \$31,700, nor for the Wisconsin investments of about \$15,000.

You will, of course, agree that high grade men should be chosen from among the large investors and from communities in which large sums are invested in the bridge, because they have a real reason to vote right; and particular- [fol. 268] ly good representation, at least two directors, should be given to Alamakee County with \$143,500 invested in the bridge; and the best choice of one for the Decorah community with \$68,800. The Lansing-Decorah section is where the largest number of stockholders reside and directors chosen from that community would be ever present and available for directors meetings, right there where the bridge is situated and where the problems of the Board arise.



A great many of you people purchased your stock after Phoenix brought large sums of money into the picture to buy steel and finance the young struggling Bridge Company so that a bridge could finally be completed. At that time a large number of your stockholders were very highly pleased to have me at the head of your company as president, so that I could bring this money in and save the project. A large number of you stockholders still remember those things, and have unshakeable confidence in my honesty and integrity. Others have allowed selfish and dishonest promoters to destroy that confidence and without hearing my side of the story. That, of course, is the privilege of every stockholder, but it is hardly fair, as you will grant. I think at least 90% of the bridge stockholders are fundamentally honest and intend to be fair at all times, and would not knowingly join a gang of conspirators to cheat anybody out of honest debts, nor would they refuse to hear the other man's side of the case, and spend money fighting to keep his evidence out of the record.

I am not asking you or any other man to help me or to help Phoenix; Phoenix doesn't need any help in its fight [fol. 269] to maintain its creditor's position. In the end the facts will all be proved in competent courts, and I am not a bit disturbed about the final outcome, but as stockholders we need the same help that you need, and that is the help of each other to fight for a conservative, intelligent, and above all things, honest, and representative Board of Directors and that does not mean directors favorable to my side, or anybody's side, just honest men.

For instance, if F. D. Kendrick will stand for re-election, I will vote a large block of stock for him, not because he is my friend, but because he is honest and intelligent. In fact, as you know, he has been one of the principal interveners fighting Phoenix, but it is my belief that no dishonesty was added to the fight with his knowledge and permission. I think many other very honest and honorable stockholders may be opposed to Phoenix with all the sincerity in the world, but so long as they are honest and use their intelligence, they will have our vote as well as yours.

It is extremely important that you attend this December 6th meeting, and learn all the facts, but whether you

attend or not, you should immediately fill out and mail the enclosed proxy in the enclosed stamped envelope addressed to the Bridge Company. Don't fill in my name, because I don't want it. If you do not know of anyone who is going to attend the meeting, I suggest a dozen or more names of thoroughly honest stockholders who are almost sure to attend.

George Aschom, Walter Aschom, H. W. Gaunitz, J. H. Thompson, M. Kerndt, J. W. Dempsey, D. F. Wolfe, M. A. Dunlevy, F. J. Nachtvey, P. E. Rethwisch, all of Lansing, Iowa, and G. B. Richter, H. T. Wagner, George Huntley, Frank T. Hartman, and F. D. Kendrick.

[fol. 270] I am sure any of these gentlemen would vote your stock for honest and able directors. So if you don't know anyone who is going to attend the meeting, you should choose one or more, preferably two, of the above names, fill them in the proxy blank enclosed herewith, sign it, and have a witness sign and mail it. Also fill out the information on the enclosed post card, and mail both of them immediately while the matter is on your mind.

Sincerely yours,

J. A. THOMPSON.

JAT:jb

[fol. 271]

Exhibit B

June 12, 1939.

Mr. Fred Biermann  
Decorah, Iowa

Dear Mr. Biermann:

I wish to thank you for your letter of June 8, and I especially appreciate your determined stand against the approval of any exorbitant lawyers' fees.

Of course, the amounts we paid our attorneys in this Bridge litigation really has little value in trying to determine an equitable fee for defense counsel, because the entire burden and at least ninety per cent of the work was on our side of the table after the disastrous Master's report was filed. However, these fees in total were never

any substantial portion of the \$50,000, and the mere suggestion of any such sum by any counsel on our side would have resulted in immediate dismissal. The fees involved prior to our efforts to obtain a re-hearing or opportunity to put in Phoenix evidence, in other words for everything up to the decision of the case by the Master, which was the only part involving any extensive work on the part of defendants, was less than \$5000 for all parties concerned on our side of the case and for the fees for the attorneys for the trustees.

Of course, you realize that any argument from me concerning the amount of attorneys' fees to be paid to the attorney who has caused us so much trouble would be generally regarded as prejudiced, but I think I have the ability to deal with such matters without prejudice, exactly [fol. 272] as I think you have that ability; and speaking frankly, Mr. Biermann, and totally disregarding all prejudice and disregarding the relations of the parties in this case, it is my honest opinion; first, that Mr. Ontjes has done the Bridge Company no service whatsoever, but has actually caused it a very severe damage; and secondly, even if everything he has pleaded was true, and even if the matter were permanently settled, and there was no danger that the Bridge Company would ever be shown in another court as owing all of this money, in other words, if it were a complete and honest victory, defeating the claims of fraudulent creditors to the extent of \$175,000 (not \$185,000 as they claim), then, and in that case, certainly a fee of \$50,000 would be unmentionably high, and in any case would simply mean that the lawyers would take the Bridge for their services to the Bridge Company to prevent somebody else from taking it as the Bridge Company has no \$50,000 and no possible way of obtaining it.

However, further reducing this so called \$185,000 saving, in order to get this case right down to earth, keep these facts in mind: That the court allowed the Bradshaw claim of \$4,000 which eliminated \$10,000 bonds as collateral. He allowed \$6,000 to Helmer Anderson which eliminated \$7400 of bonds, and he allowed five other claims of \$1000 each which eliminated \$5000 worth of bonds. Simple addition shows this to be \$22,400 worth

of bonds eliminated, and the total bond issue was only \$200,000, so you can readily see the dishonesty of claiming the elimination of \$185,000 worth of bonds claimed by Phoenix.

[fol. 273] Now Phoenix claimed outright ownership of \$97,000 and \$60,500 or a total of \$157,500 of Bridge bonds. The \$60,500 were bonds received in connection with the retirement of 517 shares of preferred stock which was unquestionably owned and paid for by Phoenix, so if the bonds were no good, certainly the Bridge Company must return the 517 shares of preferred stock to Phoenix. A suit is now pending in Delaware to enforce the Bridge Company to do that which it should in fairness and honesty do without a law suit, and there is not the slightest doubt that the Delaware courts will make the Bridge Company make good on the \$60,500 bonds or return the 517 shares of preferred stock. So while this law suit may have resulted in the elimination of the \$60,500 of bonds as a bonded debt, that was not a gain of \$60,500 to the Bridge Company by any means.

As to the \$97,000 worth of bonds, even if the mortgage deed of trust has been adjudicated and eliminated, and it is still shown that the Bridge Company owes the \$97,000 for legitimate borrowings, it makes little difference whether the Bridge Company pays the debt by reason of a mortgage foreclosure or by way of a judgment and execution against the Bridge.

We have to this point accounted for \$22,400 of bonds in the hands of third parties, eliminated by legitimate retirement of the full amount owing thereon, and \$157,500 worth of bonds, the collection of which has been temporarily stayed, making a total of \$179,900 and leaving \$20,100 yet to be accounted for.

These \$20,100 of bonds were pledged as collateral against Bridge Company notes for borrowed money, totaling \$17,735.19.

[fol. 274] Suits are now pending on these notes in the Delaware courts, and there is not the slightest chance that they will not be collected, because here Phoenix will have opportunity to present its evidence, which was never done

in any of the proceedings in Federal Court, and could not properly be done because Phoenix and the Bridge Company, both being Delaware corporations, could not carry on as proper parties with adverse interests in a Federal Court proceeding, as you well know.

Now I am not giving you all of these facts for the purpose of causing you to do anything about this situation, but entirely for the purpose of acquainting you first hand with facts which have never been previously made known in a general way to the stockholders, and because you happen to be a very good and personal friend of a couple of other very high grade gentlemen who are two of the closest and most highly regarded friends I have on this earth. They have told me of your fine character, and I have become convinced that you are just too fine a man to carry on and support an inconsistent and unfair position against another large group of stockholders who furnished the real money to build your Bridge. I am just as sure as anything in the world that you intend to be fair and that you and I could sit down across a conference table with all of the facts in hand, and we would arrive at exactly the same conclusion, and there would not be ten cents between us, that is, of course, if we both had the same set of facts, and I mean all of the facts.

Regardless of whether you ever do anything about this matter from an official standpoint, I want you to be personally acquainted with all of the facts, because I don't [fol. 275] want you or any man of your caliber and high character to carry around any wrong impression about me.

What would you think of the suggestion that we sit down across a conference table and digest this entire situation at some near future date?

Sincerely yours,

JOHN A. THOMPSON.

JAT:jb

[fol. 276]

Schedule.

#### Testimony of GEORGE E. PREUSS

He is a Certified Public Accountant and Supervisor in the Chicago Branch of Ernst & Ernst, Certified Public Accountants.

He assisted in the examination described in the Schedule of "Testimony of Lee J. Skoner", participated in the preparation and checked completely the Report of Special Examination of Ernst & Ernst to which reference is made in the Schedule of the "Testimony of Lee J. Skoner", and which is attached as a part of the Resistance in this cause.

He will testify that said Report is in all respects true, and complete and accurate and that the same correctly and fully reveals all financial transactions between Iowa-Wisconsin Bridge Company and Phoenix Finance Corporation and its predecessors in interest. With respect to the method of investigation and examination upon the basis of which said Report was prepared, the witness affirms and corroborates the statements contained in the Schedule of the "Testimony of Lee J. Skoner" and will testify to like effect.

[fol. 277]

Schedule.

#### Testimony of EDGAR S. GAGE.

The witness is a Certified Public Accountant with offices at 332 So. La Salle St., Chicago, Ill.

The witness was employed by the Bell, Schremser, and Cress stockholders' committee of Iowa-Wisconsin Bridge Company and worked with and under the instruction of Fred A. Ontjes, Esq., on behalf of the interveners in this cause, during January and February, 1934, in a special examination of the books and records of the Iowa-Wisconsin Bridge Company and other corporations and concerns which the Bridge Company had had transactions in connection with the construction of the Black Hawk bridge. The witness made a report of said examination to Mr. Ontjes on the 2nd day of April, 1934, and from time to time discussed the affairs of the Bridge Company and the result of his examinations with said Ontjes. The witness particularly informed Mr. Ontjes of the following items of indebtedness of the Bridge Company to the predecessor in interest of Phoenix Finance Corporation, viz., (1) \$50,000 borrowed by the Bridge Company March 10, 1931, (2) \$10,000 borrowed by the Bridge Company September 24, 1931, (3) \$9,000 borrowed by the Bridge Company Novem-



ber 10, 1932, (4) the purchase on account by the Bridge Company of U. S. Treasury Certificates in the sum of \$11,-262.71 on December 24, 1931, and (5) the cash sums of \$1,000, \$2,000, \$3,125, \$500, and \$12,110.19 borrowed by the Bridge Company from Phoenix Finance Corporation between December 20, 1932, and July 7, 1933. Witness will [fol. 278] testify that the records of the Bridge Company showed no repayment of said items of indebtedness or any part thereof and that he so advised Mr. Ontjes.

The witness appeared at the hearing of this cause before the Master on July 15, 1935, at the request of Mr. Ontjes and previous to the hour of the hearing he met with Mr. Ontjes, discussed the testimony that should be given and understood that he would be interrogated with respect to the items above mentioned. He will testify that at said hearing Mr. Ontjes withheld a large part of the material witness had assembled and that he was interrogated only with respect to a small part thereof, which part was in itself insufficient to establish conclusively the validity of the items of indebtedness above mentioned, although conclusive proof of the same was available in the data witness had then available and of which the said Ontjes had full knowledge and information.

Witness will testify that he was dismissed without being permitted to give any substantial testimony concerning the financial condition of the Bridge Company or its indebtedness to Phoenix. Prior to the testimony witness had prepared in longhand and had given to Mr. Ontjes a financial statement showing the financial condition of the Iowa-Wisconsin Bridge Company as of December 31, 1931, including the items of indebtedness to Phoenix above mentioned, and while on the witness stand Mr. Ontjes handed him what was purported to be a typewritten copy of said longhand financial statement. Upon interrogation by Mr. Ontjes, the witness testified, without careful scrutiny or further comparison with the books of the company, or with his [fol. 279] original longhand statement, and upon the assumption that Mr. Ontjes had had prepared a true typewritten copy thereof, that said typewritten statement was a true and correct financial statement of the Iowa-Wisconsin Bridge Company as of December 31, 1931, not knowing

at the time that the liabilities shown on said typewritten statement which was introduced, admitted as Exhibit B-26 H. E. B. in this cause, was incomplete, in that certain liabilities, represented by items of indebtedness of the Bridge Company to Phoenix had been, inadvertently or by design, omitted by the person responsible for the preparation of said typewritten copy.

Witness will testify that a year or more later, the falsity of said Exhibit B-26 H. E. B. was called to his attention, whereupon he made an affidavit at the request of W. B. Sloan, Esq., attorney for Phoenix Finance Corporation, dated January 25, 1937, which affidavit appears as a part of the petition for rehearing of the Phoenix Finance Corporation filed in this cause on or about the 29th day of January, 1937; that to this affidavit was attached the original of witness's longhand financial statements above mentioned, and a copy of Exhibit H-26 H. E. B. for comparison therewith; and that the facts surrounding the discrepancies between the longhand and typewritten copies were set out in said affidavit. The witness repeats and reaffirms all of the facts set forth in said affidavit and will testify to like effect.

The witness will further testify that he was employed by Phoenix Finance Corporation to make a further examination and investigation of the actual bank statements and records of the banks with which the Iowa-Wisconsin Bridge [fol. 280] Company had maintained checking accounts subsequent to November 1, 1930, to examine the books and records of various firms and corporations with which the Bridge Company had done business and carried accounts during the course of the construction of the Black Hawk Bridge, and to report and certify to Phoenix Finance Corporation the results of such examination, with particular reference to the indebtedness of the Bridge Company to Phoenix. He will testify that he found it to be a fact, and so reported to Phoenix, that Phoenix and its predecessors in interest had advanced in cash to the Bridge Company the total sum of \$318,141.85, and that there had been repaid by the Bridge Company to Phoenix, \$213,402.87 in cash, leaving a balance of \$104,738.98 due to Phoenix by the Bridge Company against which were net non-cash credits

of \$6,389.52, leaving a net balance (exclusive of interest and any stock and toll ticket investments) of \$98,394.96. The witness compared the accounts of the Bridge Company with the companion accounts of other firms and corporations to which and from which these cash funds were paid and received, and found them in agreement and conformity with the books of the Bridge Company. The witness examined a copy of the Report of Special Examination of the Cash receipts and disbursements and other financial transactions of the Bridge Company, as made and certified by Ernst & Ernst as of January 17, 1940, with his own work sheets and the books and records of the Bridge Company and found and reported to Phoenix that said Report of Ernst & Ernst is in substantial conformity in all material details with the findings and report of the witness. The [fol. 281] Report of Ernst & Ernst herein referred to is the Report filed as an Exhibit to this Resistance and the witness will so testify.

[fol. 282]

#### Schedule.

#### Testimony of LEE J. SKONER.

He is a Certified Public Accountant and Assistant Manager of the Chicago Branch of Ernst & Ernst, Certified Public Accountants.

He will testify that the firm of Ernst & Ernst were employed by Phoenix Finance Corporation in January, 1937, to make a special examination, investigation and report of the financial affairs of the Iowa-Wisconsin Bridge Company, subsequent to November 1, 1930.

He will testify that he was placed in charge of such investigation and examination; that he and other certified public accountants in the employ of Ernst & Ernst and under his supervision made a thorough examination of the actual and original books and records of the Bridge Company and of John W. Shaffer Company, Standard Shares Holding Company, Thompson & Company, Phoenix Finance System, Inc. and Phoenix Finance Corporation, as to all of the transactions between the Bridge Company and said companies; and that he and the such other certified public accountants working under his supervision, examined the

original cancelled checks representing all of the cash disbursements by check referred to in the Report (excepting only checks for \$1994.37), examined all of the original bank statements or original records of the banks upon which such checks were drawn or in which the same were deposited and all of the cash deposits and withdrawals recorded in said books of the Bridge Company.

[fol. 283] He will testify that he made, or caused to be made and executed a Report of Special Examination, including the cash receipts and disbursements of the Iowa-Wisconsin Bridge Company, from November 1, 1930 to September 25, 1933 (the latter date being the last business date prior to the appointment of the receiver in this cause), said Report being dated January 17, 1940. Said Report is referred to in the Resistance of which this Schedule is a part, and is filed therewith as an Exhibit. This Report the witness will identify and prove as a true, accurate and complete statement and summary of all of the transactions of the Iowa-Wisconsin Bridge Company for said period.

(As identified and proved by the witness, the Report of Special Examination of the accounts of Iowa-Wisconsin Bridge Company entitled "Receipts and Disbursements, Iowa-Wisconsin Bridge Company, Lansing, Iowa, November 1, 1930 to September 25, 1933" will be offered in evidence as an Exhibit on behalf of Phoenix Finance Corporation and tender of the same is hereby made).

He will testify that he found it to be a fact, as the same is disclosed by said Report, that the Bridge Company received in cash from Phoenix (including Phoenix Finance Corporation and all predecessors in interest) \$318,141.85, and repaid to Phoenix \$213,402.87, leaving a cash indebtedness of the Bridge Company to Phoenix of \$104,738.98, less net credits for non-cash items of \$6,389.52, thereby leaving a balance of net cash justly due from the Bridge Company to Phoenix, exclusive of interest and exclusive of [fol. 284] other stock and toll ticket investments or claims, of \$98,349.46. He will identify Schedule F of said Report as proving interest in the amount of \$55,638.95 as justly due to Phoenix by Bridge Company upon the said net advances of \$98,349.46.

He will testify that he advised Albert Penn, president of Phoenix Finance Corporation, and other officers and directors of the company, in August 1939, that the sums above stated constituted valid and subsisting demands and claims of Phoenix Finance Corporation against Iowa-Wisconsin Bridge Company and that, in his opinion as a certified public accountant, Phoenix Finance Corporation was entitled to recover the same by appropriate legal action. He will further testify that said Report of Special Examination does not include any claim or demand of Phoenix with respect to 517 shares of Bridge Company stock, not its claim based upon the value of \$5000 worth of bridge toll tickets, but that these claims are in addition to the claim shown by said Report.

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#### Acceptance of Service.

I hereby accept service of the within Resistance of Phoenix Finance Corporation to the Motions of Iowa-Wisconsin Bridge Company, and acknowledge receipt of a copy of said Resistance, with the Schedules thereto attached, and the Exhibit filed therewith, this 31st day of January, 1940.

F. A. ONTJES,  
Attorney for Iowa-Wisconsin  
Bridge Company.

Filed in the District Court February 2, 1940.

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[fol. 285] (Note by the clerk of the District Court: Copy of the Report of special examination of the accounts of Iowa-Wisconsin Bridge Company entitled "Receipts and Disbursements Iowa-Wisconsin Bridge Company, Lansing, Iowa, from November 1, 1930, to September 25, 1933," referred to in and made a part of Resistance of Phoenix Finance Corporation to Motions of Iowa-Wisconsin Bridge Company, is omitted here because it appears as Exhibit SC-114 at folio pages 730 to 785 of this transcript.)

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[fol. 286] (Order Directing that Depositions of George E. Preuss, et al., be not Taken, etc.)

Be it remembered that on this 6th day of February, A. D. 1940, the Motions of the Defendant Iowa-Wisconsin

Bridge Company, one filed January 24, 1940 and one filed January 25, 1940 asking for an Order that the depositions of certain witnesses be not taken, and the Resistance of Phoenix Finance Corporation filed February 2, 1940 came on for hearing, F. A. Ontjes appearing for the Defendant Iowa-Wisconsin Bridge Company, and Casper Schenk appearing for the Complaint Phoenix Finance Corporation;

And the Court having examined said Motions and Resistance and having heard statements of Counsel from which it appears it is proposed to prove by accountants matters bearing upon the issues that were presented and tried in this case some years ago.

[fol. 287] The only material issues to be considered in the Supplemental Complaint is the matter of the identity of the subjects presented for litigation in the Delaware suits described in the Supplemental Complaint with the items considered and determined in this cause, and the identity of these items must be determined from the record. That the depositions in question would not be material, that the witnesses whose testimony is noticed to be taken are incompetent to contravene or overcome the record in this case.

It Is, Therefore, Ordered that the depositions of George E. Preuss, Edgar S. Gage and Lee J. Skoner shall not be taken.

Done and Ordered this 6th day of February, 1940.

Exceptions reserved to the Phoenix Finance Corporation.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court February 6, 1940.

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[fol. 288] (Notice of Phoenix Finance Corporation of Intention to Take Deposition of John A. Thompson.)

To Iowa-Wisconsin Bridge Company, or to its attorneys,  
F. A. Ontjes and W. C. Green:

You are hereby notified that, in accordance with the notice of Intention to Take Depositions heretofore filed in



the above entitled cause, the Deposition of John A. Thompson, a resident of St. Petersburg, Florida, residing at 556 16th Avenue, N. E. in said City, will be taken upon oral examination at 805 Florida Theatre Building, in the City of St. Petersburg, County of Pinellas, State of Florida, on Friday, the 23rd day of February, 1940, commencing at ten o'clock in the forenoon, before Victor O. Wehle, Esquire, Notary Public, or before some other officer then and there qualified to take the same as authorized by law.

**JAMES R. MORFORD,  
HAROLD W. NORMAN,  
CASPER SCHENK,**  
Attorneys for Phoenix Finance  
Corporation.

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[fol. 289]                      Acceptance of Service.

Service of the foregoing Notice is hereby acknowledged and copies thereof received this 10th day of February, 1940.

**F. A. ONTJES,  
W. C. GREEN,**  
Attorneys for Iowa-Wisconsin  
Bridge Company.

Filed in the District Court February 12, 1940.

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[fol. 290] (Notice of Phoenix Finance Corporation of Intention to Take Deposition of Albert Penn.)

To Iowa-Wisconsin Bridge Company, or to its attorneys,  
F. A. Ontjes and W. C. Green:

You are hereby notified that, in accordance with the Notice of Intention to Take Depositions heretofore filed in the above entitled cause, the deposition of Albert Penn, a resident of Goshen, Indiana, will be taken upon oral examination at 1709 Harris Trust Building in the City of Chicago, Cook County, Illinois, on Tuesday, the 27th day of February, 1940, commencing at ten o'clock in the forenoon, before Roy Fuller, Notary Public and Court Reporter, or be-

fore some other officer then and there qualified to take the same as authorized by law.

JAMES R. MORFORD,  
HAROLD W. NORMAN,  
CASPER SCHENK,  
Attorneys for Phoenix Finance  
Corporation.

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[fol. 291]                      Acceptance of Service.

Service of the foregoing Notice is hereby acknowledged and copies thereof received this 10th day of February, 1940.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Iowa-Wisconsin  
Bridge Company.

Filed in the District Court February 12, 1940.

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[fol. 292] (Motion for Order that Depositions of John A. Thompson and Albert Penn be not Taken.)

Comes now the defendant, Iowa-Wisconsin Bridge Company and moves the court as follows:

(a) To enter an order that the depositions of John A. Thompson and Albert Penn specified in Phoenix Finance Corporation's notices served on the 10th day of February 1940 for the taking of depositions shall not be taken.

(b) If order not entered that depositions shall not be taken: that then an order be entered that the scope of the examination be limited to specific matters considered competent, relevant and material by the court and that the court order whether such examination be on written interrogatories issued out of this court or on oral interrogatories.

(c) To set and to proceed with the hearing on permanent injunction.

on the following grounds and for the following reasons to-wit:

(1) That this cause has been tried on its merits and that the time for the taking of depositions has expired.

(2) That said John A. Thompson and Albert Penn are directors of the Phoenix Finance Corporation and one of them is president of said corporation.

That Albert Penn was not present at the trial of this [fol. 293] cause nor at the hearing on exceptions to the Masters' Report nor at the hearing of the petition for rehearing in support of which he made an affidavit for the Phoenix Finance Corporation (R. 302-304) and is not in a position to give any material, competent or relevant evidence as to what was involved in this cause, the record itself in this case being the best evidence.

That said John A. Thompson's deposition was taken in this cause prior to trial, a transcript of which is on file in this cause (% 414-500) and he was a witness on the trial of this cause and his testimony appears in transcripts on file herein (R. 538-561; 562-565; 633-637; 651-653; 673-685; 691-692); that he made affidavit for the Phoenix Finance Corporation which are attached to its petition for rehearing on file in this cause (R. 230-231; 355-364); that he is not in a position to give any competent, relevant or material evidence as to what was involved in the hearings in this cause, the record itself being the best evidence.

That the said John A. Thompson and Albert Penn, whose testimony is noticed to be taken, are incompetent to contravene or overcome the record in this cause.

That the said Phoenix Finance Corporation is merely attempting and proposing to take said depositions with respect to matters stricken from the allegations of its answer to the supplemental bill and which have been previously adjudicated by this court in this cause.

Paragraph nine of the supplemental bill alleges that John A. Thompson asserted about December 6th, 1938 "that the litigation involved in this action was not ended and would not be ended for a good many years. That on the 8th day of July 1939 as president of the Phoenix Finance Corporation said Thompson asserted that one case had been tried in the courts of Delaware in June 1939 and

that the thing, referring to the matters involved in this action, was not over, and that there were six cases in the [fol. 294] state of Delaware that would be carried on in the course of the next few months."

The Phoenix Finance Corporation's answer thereto is a denial but admits the last clause of the allegation, which is the material part.

Phoenix Finance Corporation attached to its resistance filed February 2, 1940 to motions that certain depositions be not taken what it claims to be excerpts of record of proceedings of annual meeting of Class "B" stockholders of the Iowa-Wisconsin Bridge Company on July 8, 1939 as reported by Vernon L. Grant, certified shorthand reporter, Des Moines, Iowa, in which it is stated that John A. Thompson on said date, among other things, stated: "Mr. Ontjes has stated here and he stated in the December meeting that the litigation between the Phoenix and the bridge company was over. Now in the first place there never was any litigation between the Phoenix and the bridge company. \* \* \* Now this indebtedness can be properly presented and evidence can be put in down in the Delaware Court. That is now being done. There are six cases down there now that will be carried on through the course of the next few months."

That the Phoenix Finance Corporation has a transcript of the statements of the said certified shorthand reporter Vernon L. Grant and no reason exists why they cannot produce such transcript as to any such statements, and that there is not sufficient material difference between the allegations of the Supplemental Bill in that respect and Phoenix Finance Corporation's Answer and statements as claimed by it in its resistance to necessitate the taking of any deposition with respect thereto.

That in paragraph ten of the Supplemental Bill it is alleged that John A. Thompson wrote certain letters containing certain statements and the Phoenix Finance Corporation's Answer admits that said letters were written [fol. 295] by John A. Thompson in substance substantially as alleged. To the above mentioned resistance on file herein the Phoenix Finance Corporation attached copies

of said letters which it has stated are true copies and which contain the identical language alleged in the Supplemental Bill and there is no occasion to take any depositions with respect to said letters.

That as to the subjects presented for litigation in the Delaware suits described in the Supplemental Bill the Phoenix Finance Corporation's Answer with respect thereto substantially admits the allegations of the complaint as amended and if in any respect not admitted in the Answer or other papers filed by Phoenix herein, then certified exemplified copies of the pleadings in said suits will be the best evidence thereof and the said John A. Thompson and Albert Penn are not competent witnesses and can give no competent, relevant or material evidence as to the subjects of said suits.

That the Phoenix Finance Corporation in its answer answering paragraph 11 of the Supplemental Bill admits the recording of the mortgage therein mentioned and that the court in this cause made findings with respect to said mortgage substantially as alleged in the Supplemental Bill.

That the said witnesses are not in position to give competent, relevant or material evidence under the issues joined.

That the time for the taking of the depositions of said John A. Thompson and Albert Penn mentioned in the aforesaid notice for the taking of depositions has expired and will have expired before said depositions can be taken.

That no reason has been assigned why the said Phoenix Finance Corporation cannot have its said directors and president John A. Thompson and Albert Penn present on [fol. 296] the hearing for permanent injunction nor has it been asserted that they will not be present at such hearing. That they have been in attendance on the various hearings had with respect to the Supplemental Bill as Amended and Answer thereto herein, except the last hearing on motion that certain depositions be not taken.

F. A. ONTJES,  
W. C. GREEN,


Attorneys for the Iowa-Wisconsin Bridge Company.

State of Iowa,  
Cerro Gordo County—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I am an attorney for the Iowa-Wisconsin Bridge Company; that I have read the statements contained in the foregoing Motion and that the same are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 10th day of February A. D. 1940.

(Seal) F. T. BARRETT,   
Notary Public in and for  
Cerro Gordo County, Iowa.

Filed in the District Court February 12, 1940.

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[fol. 297] (Application for an Order That Depositions of  
John A. Thompson and Albert Penn Be Not Taken  
Until the Further Order of Court.)

Comes now the defendant, Iowa-Wisconsin Bridge Company and respectfully shows to this Honorable Court that the Phoenix Finance Corporation on the 10th day of February 1940 served notices for the taking of the deposition of John A. Thompson on the 23rd day of February 1940 in St. Petersburg, Florida and for the taking of the deposition of Albert Penn on the 27th day of February 1940 in Chicago, Illinois; that this defendant immediately prepared a motion for an order that said depositions be not taken (Rule 30 (b)); and mailed the same to the Clerk of this Court and the said Motion was filed February 12th, 1940; and this defendant also immediately mailed notice of hearing of said motion at Sioux City, Iowa on the 5th day of March 1940 with copy of said Motion thereto attached to Casper Schenk, Attorney for Phoenix Finance Corporation addressed to him at Des Moines, Iowa (Rule 5 (b)); and that service of said notice was also acknowledged and accepted February 12, 1940 by said attorney; that said motion for an order that deposition of said witnesses John A. Thompson and Albert Penn specified in the notices to take depositions be not taken under the rules



of this court and notice served in accordance therewith will come on for hearing on the 5th day of March 1940 at [fol. 298] Sioux City, Iowa or as soon thereafter as the same can be heard by this Court; this defendant also stated in said notice that it consents that said motion may be heard by the Court at any earlier date convenient to the court. That to permit the Phoenix Finance Corporation to take said depositions on the 23rd and 27th days of February 1940 as specified in said notices would deprive this defendant of the benefit of Rule 30 (b) entitling it to a ruling of this court on said motion before such depositions are taken and would cause this defendant considerable unnecessary expense if not entitled to be taken.

Wherefore defendant, Iowa-Wisconsin Bridge Company, asks this Honorable Court to enter an order that said depositions shall not be taken until after said motion has been ruled upon by this court, and then only if this court rules that they may be taken. (Rule 30 (a) — Rule 6 (b)).

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for the Iowa-  
Wis. Bridge Company.

State of Iowa,  
Cerro Gordo County—ss.:

I, F. A. Ontjes, being first duly sworn on oath depose and say that I am an attorney for the Iowa-Wisconsin Bridge Company and have read the statements contained in the foregoing application and that the same are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 13th day of February A. D. 1940.

(Notarial Seal) F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa.

Filed in the District Court February 14, 1940.

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[fol. 299] (Order that Depositions of John A. Thompson and Albert Penn be not taken until Court has ruled on Motion and Application.)

Be It Remembered that on this 14 day of February 1940 the Application of the Iowa-Wisconsin Bridge Company for an order that depositions be not taken until further order of this court came on for hearing and the court having examined said application and being fully advised in the premises it is hereby

Ordered that the depositions of John A. Thompson and Albert Penn shall not be taken until this court has ruled on the motion on file mentioned in said application and then only if this court rules that said depositions may be taken.

GEO. C. SCOTT,  
Judge United States District Court.

Signed in Chambers at Sioux City, Iowa, to be entered of record in the Eastern Division.

Filed in the District Court February 14, 1940.

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[fol. 300] (Notice of Hearing of Motion that Depositions of John A. Thompson and Albert Penn be not taken, etc.)

To Casper Schenk, James R. Morford and H. W. Norman,  
attorneys for Phoenix Finance Corporation:

You And Each Of You Are Hereby Notified that the defendant, Iowa-Wisconsin Bridge Company, has filed a motion in the above entitled cause, a copy of which is hereto attached and made a part hereof, and that said motion will come on for hearing and submission at Sioux City, Iowa in the United States District Court Room on March 5th, 1940 or as soon thereafter as the same can be heard by the court. We consent that said motion may be heard by the court at any earlier date convenient to the Court.

F. A. ONTJES,  
W. C. GREEN,

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We hereby accept service of the foregoing Notice and acknowledge receipt of copy of Motion thereto attached this 12th day of February, A. D. 1940.

JAMES R. MORFORD,  
H. W. NORMAN,  
CASPER SCHENK,  
Attorneys for Phoenix  
Finance Corporation.

Filed in the District Court February 14, 1940.

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[fol. 301] Motion For Order That Depositions of John A. Thompson and Albert Penn Be Not Taken.

In the District Court of the United States In and For the Northern District of Iowa, Eastern Division.

First Trust & Savings Bank (formerly Bechtel Trust Company) and A. H. Schubert as Trustees and Phoenix Finance Corporation, Complainants,  
#220. vs. Equity.

Iowa-Wisconsin Bridge Company, a corporation,  
Defendant,

Fayette D. Kendrick, et al., Interveners.

Comes now the defendant, Iowa-Wisconsin Bridge Company and moves the court as follows:

(a) To enter an order that the depositions of John A. Thompson and Albert Penn specified in Phoenix Finance Corporation's notices served on the 10th day of February, 1940, for the taking of depositions shall not be taken.

(b) If order not entered that depositions shall not be taken that then an order be entered that the scope of the examination be limited to specific matters considered competent, relevant and material by the court and that the court order whether such examination be on written interrogatories issued out of this court or on oral interrogatories.

(c) To act and to proceed with the hearing on permanent injunction.

on the following grounds and for the following reasons, to-wit:

(1) That this cause has been tried on its merits and that the time for the taking of depositions has expired.

(2) That said John A. Thompson and Albert Penn are directors of the Phoenix Finance Corporation and one of [fol. 302] them is president of said corporation.

That Albert Penn was not present at the trial of this cause nor at the hearing on exceptions to the Master's Report nor at the hearing of the petition for rehearing in support of which he made an affidavit for the Phoenix Finance Corporation (R302-304) and is not in a position to give any material, competent or relevant evidence as to what was involved in this cause, the record itself in this case being the best evidence.

That said John A. Thompson's deposition was taken in this cause prior to trial, a transcript of which is on file in this cause (R. 414-500) and he was a witness on the trial of this cause and his testimony appears in transcript on file herein (R. 538-561; 562-565; 633-637; 651-653; 673-685; 691-692); that he made affidavits for the Phoenix Finance Corporation which are attached to its petition for rehearing on file in this cause (R230-231; 355-364) that he is not in a position to give any competent, relevant or material evidence as to what was involved in the hearings in this cause, the record itself being the best evidence.

That the said John A. Thompson and Albert Penn, whose testimony is noticed to be taken, are incompetent to contravene or overcome the record in this cause.

That the said Phoenix Finance Corporation is merely attempting and proposing to take said depositions with respect to matters stricken from the allegations of its answer to the supplemental bill and which have been previously adjudicated by this court in this cause.

Paragraph nine of the supplemental bill alleges that John A. Thompson asserted about December 6th, 1938, "that the litigation involved in this action was not ended and would not be ended for a good many years. That on the 8th day of July, 1939, as president of the Phoenix Finance Corporation said Thompson asserted that one case had been [fol. 303] tried in the courts of Delaware in June, 1939,

and that the thing, referring to the matters involved in this action, was not over, and that there were six cases in the state of Delaware that would be carried on in the course of the next few months."

The Phoenix Finance Corporation's answer thereto is a denial but admits the last clause of the allegation, which is the material part.

Phoenix Finance Corporation attached to its resistance filed February 2, 1940, to motions that certain depositions be not taken what it claims to be excerpts of record of proceedings of annual meeting of Class "B" stockholders of the Iowa-Wisconsin Bridge Company on July 8, 1939, as reported by Vernon L. Grant, certified shorthand reporter, Des Moines, Iowa, in which it is stated that John A. Thompson on said date, among other things, stated: "Mr. Ontjes has stated here and he stated in the December meeting that the litigations between the Phoenix and the bridge company was over. Now in the first place there never was any litigation between the Phoenix and the bridge company. \* \* \* Now this indebtedness can be properly presented and evidence can be put in down in the Delaware Court. That is now being done. There are six cases down there now that will be carried on through the course of the next few months."

That the Phoenix Finance Corporation has a transcript of the statements of the said certified shorthand reporter Vernon L. Grant and no reason exists why they cannot produce such transcript as to any such statements, and that there is not sufficient material difference between the allegations of the Supplemental Bill in that respect and Phoenix Finance Corporation's Answer and statements as claimed by it in its resistance to necessitate the taking of any deposition with respect thereto.

[fol. 304] That in paragraph ten of the Supplemental Bill it is alleged that John A. Thompson wrote certain letters containing certain statements and the Phoenix Finance Corporation's Answer admits that said letters were written by John A. Thompson in substance substantially as alleged. To the above mentioned resistance on file herein the Phoenix Finance Corporation attached copies of said letters

which it has stated are true copies and which contain the identical language alleged in the Supplemental Bill and there is no occasion to take any depositions with respect to said letters.

That as to the subjects presented for litigation in the Delaware suits described in the Supplemental Bill the Phoenix Finance Corporation's Answer with respect thereto substantially admits the allegations of the complaint as amended and if in any respect not admitted in the Answer or other papers filed by Phoenix herein, then certified exemplified copies of the pleadings in said suits will be the best evidence thereof and the said John A. Thompson and Albert Penn are not competent witnesses and can give no competent, relevant or material evidence as to the subjects of said suits.

That the Phoenix Finance Corporation in its answer answering paragraph 11 of the Supplemental Bill admits the recording of the mortgage therein mentioned and that the court in this cause made findings with respect to said mortgage substantially as alleged in the Supplemental Bill.

That the said witnesses are not in position to give competent, relevant or material evidence under the issues joined.

That the time for the taking of the depositions of said John A. Thompson and Albert Penn mentioned in the aforesaid notice for the taking of depositions has expired and [fol. 305] will have expired before said depositions can be taken.

That no reason has been assigned why the said Phoenix Finance Corporation cannot have its said directors and president John A. Thompson and Albert Penn present on the hearing for permanent injunction nor has it been asserted that they will not be present at such hearing. That they have been in attendance on the various hearings had with respect to the Supplemental Bill as amended and Answer thereto herein, except the last hearing on motion that depositions be not taken.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for the Iowa-Wisconsin Bridge Company.



State of Iowa,  
Cerro Gordo County.—ss.:

I, A. F. Ontjes, being first duly sworn on oath depose and say that I am an attorney for the Iowa-Wisconsin Bridge Company; that I have read the statements contained in the foregoing Motion and that the same are true as I verily believe.

F. A. ONTJES.

Subscribed and sworn to before me by the said F. A. Ontjes  
this 10th day of February, A. D. 1940.

(Seal)

F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa.

[fol. 306] (Order Setting Case For Hearing on Motion to  
Stay Taking of Depositions and Merits.)

Ordered that the motion to stay the taking of depositions be assigned for final hearing, and the cause be also assigned for trial on its merits, on March 5th, proximo at ten o'clock A. M., at the United States Court Room in Sioux City, Iowa.

Done and Ordered at Sioux City, Iowa, this 14th day of February, 1940, to be entered of record in the Eastern Division.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court February 14, 1940.

[fol. 307] (Order Reassigning Case For Trial on Merits.)

It is now Ordered that the above entitled cause is reassigned for trial on its merits for March 11th, 1940, at two o'clock P. M., in the United States Court Room at Sioux City, Iowa.

Done and Ordered at Sioux City, Iowa, this 19th day of February, 1940, to be entered of record in the Eastern Division.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court February 19, 1940.

[fol. 308] Resistance of Phoenix Finance Corporation to Motion of Iowa-Wisconsin Bridge Company for Order That Depositions of John A. Thompson and Albert Penn be Not Taken.)

Now comes Phoenix Finance Corporation, impleaded as a party complainant by order of Court in the above stated cause, and defendant in the Supplemental and Ancillary Bill of Complaint filed by Iowa-Wisconsin Bridge Company, the original defendant in said cause and the complainant in said Supplemental and Ancillary Bill of Complaint, and resists the motion of Iowa-Wisconsin Bridge Company for an order that the depositions of John A. Thompson and Albert Penn be not taken, which said motion was verified February 10, 1940. As grounds of resistance to said motion Phoenix Finance Corporation respectfully shows as follows:

1. This cause has not been tried on its merits with respect to said Supplemental and Ancillary Bill of Complaint, as amended, of Iowa-Wisconsin Bridge Company and the Answer and Counterclaim of Phoenix Finance Corporation thereto. The time for taking depositions has not expired for the reason that pursuant to Rule 5 of the Rules of the United States District Court for the Northern District of Iowa, Phoenix Finance Corporation, within ten days after the pleadings were closed on said Supplemental and Ancillary Bill of Complaint as amended and said Answer and Counterclaim thereto, filed with the Clerk of this Court a statement of intention to take depositions for use at the trial of this cause, naming the witnesses and their addresses and stating the particular occasion for taking such testimony in such form, as by reference to said notice filed in this cause will more fully appear. Said depositions of witnesses on behalf of Phoenix Finance Corporation were also proposed to be taken pursuant to Rules 26, 28, and 30 of the Rules of Civil Procedure for the District Courts of the United States, wherein it is provided inter alia that the testimony of any person may be taken at the instance of any party, by deposition upon oral examination at any time after an Answer has been served and without leave of Court.

2. Albert Penn is an officer and director of Phoenix Finance Corporation and resides at Goshen in the State of

[fol. 309] Indiana. John A. Thompson is a director, but not an officer, of Phoenix Finance Corporation, and resides at St. Petersburg, in the State of Florida. Neither of said witnesses is in the Northern District of Iowa or within a hundred miles of the place of the trial of this cause, or otherwise within the jurisdiction of this Court so as to be subject to the service of a subpoena. Phoenix Finance Corporation has and can have no assurance that said witnesses, or either of them, will be available to testify in person at the trial of this cause and desires to take their testimony by deposition as provided by the said Rules of Civil Procedure, for use in the event said witnesses, or either of them, for any reason whatsoever, are not available in person at the trial. There is no statute or rule of Court requiring a party litigant to produce personally at the trial of a cause, non-resident witnesses who are not subject to subpoena, or are otherwise unavailable, even though such witnesses are officers and/or directors of a corporate party. There is no statute nor rule of court prohibiting, or in any way limiting the right of Phoenix Finance Corporation to take the depositions of said witnesses in this cause and, on the contrary, the right to take such depositions is specifically provided by the Rules of Civil Procedure governing the practice in the District Courts of the United States. Phoenix Finance Corporation denies that the said John A. Thompson and the said Albert Penn are not in a position to give material, competent or relevant evidence as to the issues in this cause, and on the contrary avers that the issues in this cause are as hereinafter stated, and that by the depositions of the said John A. Thompson and Albert Penn, Phoenix Finance Corporation expects to prove as evidence in this cause on its behalf, and that said witnesses will testify to, the facts inter alia stated in the Schedules attached to the Resistance verified January 31, 1940, heretofore filed in this cause to other motions of Iowa-Wisconsin Bridge Company, said Schedules being entitled "Testimony of John A. Thompson", and "Testimony of Albert Penn", respectively, and including certain Exhibits attached thereto, and said former Resistance and each and every averment thereof, and said Schedules of Testimony and Exhibits, by this reference thereto, are incorporated in this Resistance with the same force and effect as though set forth in full herein.

3. Phoenix Finance Corporation denies that John A. [fol. 310] Thompson at any time testified in the principal cause herein as a witness on behalf of Phoenix Finance Corporation, although he was called as a witness on behalf of the Trustee Complainants, and as a witness on behalf of Iowa-Wisconsin Bridge Company, the defendant, with respect to the issue of mortgage foreclosure. The said John A. Thompson, although at all times available as a witness on behalf of Phoenix Finance Corporation in the principal cause, did not testify and was not permitted to testify on behalf of Phoenix Finance Corporation, nor was the said Phoenix Finance Corporation permitted to offer evidence in support of any claim or demand of any character of Phoenix Finance Corporation against Iowa-Wisconsin Bridge Company, or in defense of any supposed set off or counterclaim of Iowa-Wisconsin Bridge Company against Phoenix Finance Corporation, for the reason that no such issues were involved in said cause, nor were within the scope of the pleadings, nor were within the contemplation of the parties, their attorneys, or the Special Master, at that stage of the proceedings comprehended by the record in this cause. Phoenix Finance Corporation although desiring to offer evidence on its behalf in said principal cause was informed by the attorneys for the respective parties and by the Special Master that the testimony on its behalf as a bondholder of Iowa-Wisconsin Bridge Company would not be permitted at that stage of the proceedings, but that, after the issue of foreclosure had been decided and foreclosure ordered, and if then the status of Phoenix Finance Corporation as a bondholder were attached or challenged, then and then only might Phoenix Finance Corporation properly offer testimony to support its position as a bondholder, and thereby to prove, where necessary, the underlying considerations for any bonds held or owned by it; and that in this event the testimony of John A. Thompson as a witness on behalf of Phoenix Finance Corporation as such bondholder would be permitted and would have been relevant and proper. Although the Master's report recommended a decree of foreclosure, the Master's report in this respect was reversed by the District Court and accordingly Phoenix Finance Corporation was at no time accorded an opportunity to present testimony on its behalf in this cause [fol. 311] with respect to the issues involved in the six

proceedings in the State of Delaware mentioned in paragraph 7 of the Supplemental and Ancillary Bill, or with respect to the consideration for and validity of said \$50,000 mortgage, or with respect to its ownership of less than 50% of the Voting Capital Stock of the Bridge Company, or with respect to the facts to disprove any domination or control of its affairs, or the affairs of the Bridge Company by John A. Thompson. Phoenix Finance Corporation therefore avers and shows that not only was it not such a party to said original cause that a valid adjudication could be made against it, and not only were there no issues in said cause relating to the matters involved in the Supplemental and Ancillary Bill, but also and further, that Phoenix Finance Corporation was not permitted at any of the hearings in said original cause to offer testimony on its behalf through the witnesses, John A. Thompson, Albert Penn, or any other person or persons, to prove any claim or demand of any character of Phoenix Finance Corporation against Iowa-Wisconsin Bridge Company or to disprove any supposed set-off or counterclaim of Iowa-Wisconsin Bridge Company against Phoenix Finance Corporation.

4. Phoenix Finance Corporation further shows that the deposition of John A. Thompson taken prior to the trial of the original cause herein (R. 414-500) and referred to in the motion of Iowa-Wisconsin Bridge Company is not properly a part of the record of the evidence in this cause for the reason that said deposition by order of this Court dated October 28, 1937 (R. 216) was ordered to be printed as a part of the record for use only in the presentation of the question as to whether or not the trial Court arbitrarily and in abuse of discretion overruled the appellants' motion for rehearing, "but for no other purpose." At no time was said deposition or any part thereof admitted in evidence in said original cause on behalf of any party thereto, but on the contrary the same was filed with the Clerk of this Court at Dubuque, Iowa, without a disclosure being made of the limited purpose for which the same was to be used as above stated, and thereafter the same was, without appropriate notation being made of the limited



purpose thereof as above stated, incorporated generally in [fol. 312] the printed record on appeal in the original cause. Neither said deposition nor the affidavits of John A. Thompson and Albert Penn filed in support of the Petitions for Rehearing in said original cause are or can be considered as evidence on behalf of Phoenix Finance Corporation in this cause on the Supplemental and Ancillary Bill of Complaint, and in order to sustain and prove the allegations set forth in said affidavits, Phoenix Finance Corporation will be required to prove all of said facts either by producing the witnesses to prove the same at the trial of this cause, or by taking the depositions of such witnesses who are or may not be so available.

5. Phoenix Finance Corporation denies that it is attempting and proposing to take the depositions of John A. Thompson and Albert Penn, or any depositions whatsoever, with respect to matters stricken from the allegations of its Answer and Counterclaim to the Supplemental and Ancillary Bill of Complaint, or with respect to any matters which have been previously validly adjudicated by this Court in this cause against it. The issues in this cause as defined by the pleadings, eliminating those portions of the Answer and Counterclaim of Phoenix Finance Corporation stricken by Order of this Court of December 18, 1939 (reserving all manner of exception to said Order) include the following:

(a) In Paragraph 2 of the Supplemental and Ancillary Bill of Complaint, Iowa-Wisconsin Bridge Company alleges "That by said final decree all matters and differences between the complainant, Phoenix Finance Corporation, and its predecessor, Phoenix Finance System, Inc. on the one hand, and the defendant Iowa-Wisconsin Bridge Company on the other, were fully settled, adjudicated and determined, and that since the entry of said decree there have been no business transactions whatsoever between said defendant Iowa-Wisconsin Bridge Company and said complainant Phoenix Finance Corporation or its predecessor". By paragraph 2 of the Answer and Counterclaim of Phoenix Finance Corporation said allegations are denied and an issue of fact is thereby created.

(b) In paragraph 5 of the Supplemental and Ancillary Bill of Complaint it is alleged by Iowa-Wisconsin Bridge



Company with respect to the original cause herein "that this cause was defended against the unjust claims of the Phoenix Finance Corporation at great expense to the Bridge Company and in said action the various claims of the Phoenix Finance Corporation were fully heard and adjudicated". It is further alleged in said paragraph of [fol. 313] the Supplemental and Ancillary Bill that the taking of depositions "involved a great deal of time", and that "the trial of this cause before the Master involved a number of weeks", and "that the hearing before this court on exceptions involved months of work", and that the hearing before this court to settle the record on appeal "involved many additional weeks of work". These allegations of fact are all denied in paragraph 5 of the Answer and Counterclaim of Phoenix Finance Corporation, and while Phoenix Finance Corporation recognizes the probable immateriality of the length of time involved in the trials and hearings in the original cause it nevertheless proposes to show and prove, as above stated, that no testimony was taken or evidence offered on its behalf and, if material, that the trial before the Master involved actually less than two weeks, and that practically all the evidence was adduced on behalf of the Interveners and related to matters wholly immaterial and irrelevant to the issues in said cause as defined by the pleadings.

(c) In paragraph 6 of the Supplemental and Ancillary Bill of Complaint it is alleged by Iowa-Wisconsin Bridge Company that Phoenix Finance Corporation is disregarding the adjudication and order of this Court, and that said Phoenix Finance Corporation "for the purpose of depriving this defendant of the fruits of said adjudication and for the purpose of harassing, vexing and annoying and destroying the business of this defendant, has commenced and is prosecuting and is about to prosecute in the state of Delaware numerous and divers suits and actions involving the same matters fully and finally determined by said United States District Court for the Northern District of Iowa and has further and in contempt of said Court filed for record and recorded the \$50,000 mortgage hereinbefore and hereinafter referred to". The said allegations of fact with respect to the purpose for which Phoenix Finance Corporation has instituted said actions in Delaware, and

has recorded said mortgage, are denied by paragraph 6 of the Answer and Counterclaim of Phoenix Finance Corporation and issues of fact are hereby created.

(d) In paragraph 8 of the Supplemental and Ancillary Bill of Complaint it is alleged by Iowa-Wisconsin Bridge Company that "it has had no business with the said Phoenix Finance Corporation since the commencement of this [fol. 314] action and alleges on information and belief that the said actions are a mere attempt on the part of the Phoenix Finance Corporation to relitigate the matters involved in this cause and decided by this court". All of said allegations are denied by paragraph 8 of the Answer and Counterclaim of Phoenix Finance Corporation and issues of facts are thereby created.

(e) Paragraph 9 and 10 of the Supplemental and Ancillary Bill of Complaint contain allegations of fact denied by paragraphs 9 and 10, respectively, of the Answer and Counterclaim of Phoenix Finance Corporation, and in this respect issues of fact are framed requiring testimony to prove and/or to disprove the same by the respective parties. In this respect the said John A. Thompson will particularly testify that he did not state or assert about December 6, 1938, or at any other time "that the litigation involved in this action was not ended and would not be ended for a good many of years". He will further testify that he was not President of Phoenix Finance Corporation on July 8, 1939, and did not, as President of Phoenix Finance Corporation, or otherwise, assert "that the thing, referring to the matters involved in this case, was not over, \*\*\*\*", but on the contrary that the said John A. Thompson stated and asserted with respect to said litigation only the things stated in the typewritten transcript of the shorthand notes of Vernon L. Grant, Exhibit "A" to the "Schedule of Testimony of Albert Penn", to which reference is above made. The said John A. Thompson will further testify and prove that a certain allegation of Iowa-Wisconsin Bridge Company, as contained in paragraph 10 of the Supplemental and Ancillary Bill, and purporting to be a quotation from a letter written by the said John A. Thompson to the stockholders of the Bridge Company is a misquotation from the letter of said John A. Thompson

to which reference is made, and that the copy of said letter attached as an exhibit to the "Schedule of Testimony of the said John A. Thompson" to which reference is above made is a true and complete copy of said letter.

(f) In paragraph 11 of the Supplemental and Ancillary Bill of Complaint, Iowa-Wisconsin Bridge Company has alleged that by the recording of the \$50,000 mortgage, dated March 10, 1931, "Phoenix Finance Corporation has wrongfully cast a cloud upon the title of this defendant to [fol. 315] its property and has attempted to render null and void that portion of the decree and order of this court finally determining the invalidity of said mortgage". Said allegations of fact are denied by paragraph 11 of the Answer and Counterclaim of Phoenix Finance Corporation and issues are thereby framed for the determination of this Court at the trial of this cause.

(g) The allegations of paragraph 12 of the Supplemental and Ancillary Bill of Complaint while, to a large extent, conclusions either of fact or of law from other facts elsewhere in said Supplemental and Ancillary Bill alleged, are nevertheless denied by Phoenix Finance Corporation by paragraph 12 of its Answer and Counterclaim, except that it admits an intention to prosecute the actions described in paragraph 7 of the Supplemental and Ancillary Bill, and that it proposes to permit said \$50,000 mortgage to remain on record. Accordingly further issues are before the Court for adjudication in this cause.

(h) With respect to the cause of action in the Superior Court of the State of Delaware, referred to in paragraph 7 (e) of the Supplemental and Ancillary Bill of Complaint, Phoenix Finance Corporation is entitled to show that this suit is upon bonds, which, at the time of the institution of the foreclosure suit in the original cause, at the times of the hearings thereon, and at the time of the decree therein, were in the hands of an innocent holder in due course for value, who was not and who could not properly be a party to this cause, and by such evidence to show that there was and has been no adjudication with respect to the bonds sued upon in said action which is or can be binding upon Phoenix Finance Corporation, the present holder thereof.

(i) With respect to the cause of action in the Court of Chancery of the State of Delaware, set forth in paragraph 7 (b) of the Supplemental and Ancillary Bill, it is alleged by Iowa-Wisconsin Bridge Company in said paragraph that the said 517 shares of Class "A" Stock of Iowa-Wisconsin Bridge Company were "surrendered and cancelled at the time said Phoenix Finance Corporation fraudulently procured the issuance of \$60,500 of bonds involved in and as found in this action". Said allegation of fact is denied by paragraph 7 (b) of the Answer and Counterclaim of Phoenix Finance Corporation, and Phoenix Finance Corporation is entitled to offer evidence to prove that said [fol. 316] shares of stock were transferred to the name of Iowa-Wisconsin Bridge Company, and were and still are carried on the books of said company as Treasury Stock. The said last mentioned cause in the Court of Chancery further relates to matters peculiarly within the jurisdiction of the courts of the domicile of Iowa-Wisconsin Bridge Company, and the issues as framed in said cause are not matters properly cognizable in this cause in this Court. With respect to such issues of fact the testimony of John A. Thompson and Albert Penn will be material and relevant and if Phoenix Finance Corporation is denied the right to take the depositions of said witnesses in this respect, the said Phoenix Finance Corporation will thereby be denied due process of law in this cause.

(j) With further relation to the issues in this cause as defined by the Supplemental and Ancillary Bill of Complaint of Iowa-Wisconsin Bridge Company, and the Answer and Counter-claim of Phoenix Finance Corporation, reference is made to the aforesaid Resistance of Phoenix Finance Corporation filed to the former motions of Iowa-Wisconsin Bridge Company herein, and as above stated said Resistance and each and every averment thereto and the Schedules of Testimony and Exhibits attached thereto, are by this reference incorporated herein.

6. The Motion of Iowa-Wisconsin Bridge Company to which this Resistance is filed concedes the materiality of the transcript of the statements of John A. Thompson at the Stockholders' Meeting of Iowa-Wisconsin Bridge Company, held on July 8, 1939, as taken in shorthand notes

and transcribed by Vernon L. Grant, certified shorthand reporter. Phoenix Finance Corporation avers and shows that if said transcript is relevant and material, the testimony of both John A. Thompson and Albert Penn, with respect to the statement of John A. Thompson at said meeting, and that said transcript of Vernon L. Grant is correct and complete, is likewise material and relevant to the issues in this cause, and that the depositions of said witnesses with respect thereto should be permitted. With respect to the allegations of paragraph 10 of the Supplemental and Ancillary Bill of Complaint, and the Answer of Phoenix Finance Corporation thereto, the said John A. Thompson as the writer of the letters referred to therein should be permitted to identify and prove the same, said letters being as shown by Exhibits "A" and "B" to the "Schedule of Testimony of John A. Thompson", filed as [fol. 317] a part of the Resistance of Phoenix Finance Corporation to which reference is above made. Except by the testimony of John A. Thompson with respect to these letters either before the Court on final hearing or by deposition, the authenticity and accuracy of said letters cannot be established.

7. Phoenix Finance Corporation for the reasons above and hereinafter stated denies that the witnesses, John A. Thompson and Albert Penn are not in a position to give competent, relevant or material testimony in this cause, and deny for the reasons stated in paragraph 1 hereof that the time for the taking of depositions of said witnesses has expired or will expire before said depositions can be taken. Phoenix Finance Corporation further avers that it is not required by any Statute or Rule of Court or of Practice to show that it cannot have its Director, John A. Thompson, and its Director and President, Albert Penn, present at the final hearing of this cause, or to assign reasons therefor, nor is it required by any Statute or Rule that said witnesses must appear in person at the trial. Even though Phoenix Finance Corporation expected to have said persons present at the trial of this cause, it would be proper and in conformity with the Statutes of the United States, the Rules of Civil Procedure in the Courts of the United States, and the Rules of the United States District Court for the Northern District of Iowa, that depositions



of these or any other non-resident witnesses be taken prior to trial in order that the same may be used in the event said witnesses or either or any of them should for any reason whatsoever not be available to testify in person at the trial.

8. Reserving its exception to the Order of this Court, dated December 18, 1939, striking certain portions of the Answer and Counterclaim of Phoenix Finance Corporation, said Phoenix Finance Corporation nevertheless further respectfully avers and shows that, even with the elimination of the portions of its Answer and Counterclaim so stricken, this Court, sitting as a Court of Equity and conscience should, upon a showing in any form or upon the Court obtaining cognizance in any manner that any ruling made by it, prejudicial to the interests of any party, was so made upon a misconception of the facts shown by the record, or upon the basis of facts not shown by the record, or that the same was induced or brought about by fraud [fol. 318] and misrepresentation on the part of counsel for the prevailing party, upon its own motion, review and revise such ruling to conform with the facts, and, if necessary and in furtherance of the ends of justice, set the same aside. In this respect Phoenix Finance Corporation further avers and shows that while the record in this cause contains many instances of misrepresentations on the part of counsel for the Interveners with respect to the record, that there are certain of said representations that have been particularly prejudicial to Phoenix Finance Corporation. The attention of the Court is particularly directed to its Order dated March 4, 1937 (R. 410-413) overruling the Petitions for Rehearing and Motion for Vacation of Original Decree, wherein this Court said;

“The Interveners obtained an Order of Court for the production of the books and records of Phoenix Finance Corporation before the Master, but Phoenix Finance Corporation vigorously and successfully, it appears, prevented the production of these books and records, and its officer went on the stand before the Master, declared his inability to produce, for they had been sent to the State of Florida. It is now with poor grace that the plaintiffs invoke the discretion of the Court for a rehearing in order to use those very books and records.”



The finding in this opinion to the effect that "Phoenix Finance Corporation vigorously and successfully . . . . prevented the production of those books and records" is not only unsupported by the record of this cause, but is contradicted by the record, the facts being as stated in paragraph 43 of the Answer and Counterclaim of Phoenix Finance Corporation, a part of its Answer and Counterclaim so stricken as aforesaid, and Phoenix Finance Corporation avers and shows that the Court was misled and imposed upon by the deliberate misrepresentations of the attorney for the Interveners that Phoenix Finance Corporation had defied the order of this Court of April 24, 1934, directing that:

"the defendant, Phoenix Finance Corporation, produce at its office in Des Moines, Iowa, all its books and records appertaining to the business and affairs of the Iowa-Wisconsin Bridge Company within ten days from date of this order and submit them to the inspection of the intervener and its counsel and accountant." (R. 96)

In view of the fact that this Court then declined to exercise its discretion to grant a rehearing, upon the basis of facts [fol. 319] not established by the record, and upon facts contradicted by the record, and upon the basis of a misrepresentation of counsel as aforesaid, Phoenix Finance Corporation shows that it has been prejudiced thereby and will at the trial of this cause ask this Court to correct its findings in accordance with the facts, and to review its order denying said petitions for rehearing. In like manner this Court found that there was no consideration for the \$50,000 mortgage above stated, and that the two checks for \$35,000 and \$15,000, respectively, representing said consideration were purely fictitious. This Court also found that Phoenix Finance Corporation owned 51% of the voting Common Stock of Iowa-Wisconsin Bridge Company. These facts in like manner are not supported by the record in this cause, are in fact contradicted by the record in this cause, and are based upon mis-statements and misrepresentations of evidence by counsel for the Interveners. Accordingly, the decree of this Court was in these respects and in other respects induced by misrepresentation and fraud, and Phoenix Finance Corporation appeals to the discretion of this Court in the exercise of its inher-

ent jurisdiction, to at any time review and revise orders and decrees so obtained and to do equity and justice in the premises. Phoenix Finance Corporation proposes by the testimony of witnesses at the trial of this cause, and/or by depositions to be taken in this cause, to show to the Court the misrepresentations, fraud and fraudulent devices practiced on this Court by counsel for the Interveners that contributed to and induced the entry of the final decree herein and the denial of a rehearing. In these respects and in addition to their testimony on the issues above stated, Phoenix Finance Corporation proposes to take the depositions of the said John A. Thompson and the said Albert Penn, and by certain of the facts to be adduced by said depositions with supporting proof of all necessary records and documents, to show to the Court that its Decree in this cause and its order denying a rehearing were induced by a misconception and erroneous assumption of the facts shown by the record and by the misrepresentations, misstatements and fraudulent conduct of counsel for the Interveners.

[fol. 320] 9. Phoenix Finance Corporation prays that the Schedule of the proposed testimony of Albert Penn and John A. Thompson, as attached to the Resistance heretofore filed in this cause to the former motions of Iowa-Wisconsin Bridge Company and to which reference is above made and which said Schedules are made a part of this Resistance by reference as aforesaid, and the other facts to which the said John A. Thompson and Albert Penn will testify, as stated herein, be taken and considered as offers of evidence and exhibits in this cause on behalf of Phoenix Finance Corporation, to the same effect as though evidence and exhibits of like tenor and effect were offered at the trial, that this Court shall rule upon the admissibility of said evidence and exhibits and every part thereof in conformity with the rules of evidence and the issues of this cause, and that an exception be granted to Phoenix Finance Corporation with respect to any such evidence or exhibits rejected by Order of this Court.

JAMES R. MORFORD,  
HAROLD W. NORMAN,  
CASPER SCHENK,  
Attorneys for Phoenix Finance  
Corporation.

State of Delaware,  
County of New Castle—ss.

I, James R. Morford, being first duly sworn on oath depose and say that I am one of the attorneys for Phoenix Finance Corporation, and have read the statements contained in the foregoing Resistance to Motion and know the contents thereof and that the statements therein contained are true as I verily believe.

JAMES R. MORFORD.

Subscribed and sworn to before me by the said James R. Morford, this 26th day of February A. D. 1940.

(Seal) R. M. FITZPATRICK,  
Notary Public in and for New  
Castle County.

[fol. 321] Acceptance of Service.

Service of the foregoing Resistance is hereby acknowledged and copies thereof received on this 28th day of February, 1940.

F. A. ONTJES,  
W. C. GREEN,  
Attorneys for Iowa-Wisconsin  
Bridge Company.

Filed in the District Court February 29, 1940.

[fol. 322] (Transcript of Shorthand Notes of Hearing on Defendant's Motion Filed February 12, 1940, for Order that Depositions of John A. Thompson and Albert Penn be not Taken; and Resistance of Phoenix Finance Corporation Thereto.)

[fol. 323] Hearing on defendant's motion filed February 12, 1940, for order that depositions of John A. Thompson and Albert Penn be not taken, and resistance of Phoenix Finance Corporation thereto, commenced at 10 o'clock A. M., Tuesday, March 5, 1940, at Sioux City, in the Northern District of Iowa, Western Division, before Hon. Geo. C. Scott, District Judge, the defendant Iowa-Wisconsin Bridge Company appearing by its attorney F. A. Ontjes

of Mason City, Iowa, and the Phoenix Finance Corporation appearing by its attorney Casper Schenk, of Des Moines, Iowa.

Mr. Schenk: Your Honor please, may the reporter be sworn.

(Robert C. Turner was thereupon by the Court duly sworn as the official shorthand reporter of this proceeding.)

Mr. Ontjes: In this case of Equity No. 220, the bridge case, Your Honor, if I may briefly state with respect to our motion; the defendants having served a notice for the taking of the deposition of John A. Thompson and Albert Penn, one in Florida and the other in Chicago, so we have moved under the rules of civil procedure that those depositions be not taken for the reason stated in the motion, and particularly that the witnesses whose depositions are sought to be taken are not in position to give relevant, material or competent evidence in this case; that this case [fol. 324] primarily involves the records heretofore made in this case, and the certified and exemplified copies that will come here of records of actions that they have since started in Delaware, which we claim are violative of the decrees and orders of this court previously made, which of course are also a matter of judicial record to be presented and will not be here by oral testimony, and that oral testimony on such subjects is really not competent; if the depositions were taken the evidence would not be admissible.

Now, we allege here—we allege in the petition in the first place that the—to-wit, in one paragraph of our petition—just one second—we allege in paragraph 9 of our petition—we allege in paragraph 9 of the supplemental bill that John A. Thompson asserted about December 6, 1938, that the litigation in this action was not ended and would not be ended for a good many years. That on the 8th day of July 1939 as president of the Phoenix Finance Corporation said Thompson asserted that one case has been tried in the courts of Delaware in June 1939 and that the thing, referring to the matters involved in this action, were not over, and that there were six cases in the State of Delaware that would be carried on in the course of the next six months.

That is the allegation in the complaint. Now, in the answer, the Phoenix Finance Corporation's answer thereto is [fol. 325] a denial, but admits the last clause, the allegation which is the material part, Phoenix Finance—that is the clause, “and that there are six cases in the State of Delaware that will be carried on in the course of the next few months;” that is admitted in their answer.

Phoenix Finance Corporation attached to its resistance filed February 2, 1940, to motions that certain depositions be not taken, what they claim to be excerpts of the record of proceedings or annual meeting of Class “B” stockholders of the Iowa-Wisconsin Bridge Company on July 8, 1939, as reported by Vernon L. Grant, in which it is asserted among other things, it is said that John A. Thompson stated, “Mr. Ontjes has stated here and he stated in the December meeting that the litigation between the Phoenix and the Bridge Company was over. Now, in the first place there never was any litigation between the Phoenix and the Bridge Company. Now, this indebtedness can be properly presented and evidence can be put in down in the Delaware court. That is now being done. There are six cases down there now that will be carried on through the course of the next few months.”

Now, the allegations of the petition and what they claim was said—admit in their answer was said, and what they claim was said, are not of sufficient difference to make any material difference in the testimony. The point of the [fol. 326] litigation is that they are disregarding and intended to disregard the orders of this Court, and it might, except in this record their allegations that they make in their answer, the admissions they make in their allegations, and the allegations made in their former resistance that what they there say did occur, so there won't be any need of taking testimony. The gist of it is that they are disregarding the order of the Court, and that is what their own allegations also say.

They also say something, Your Honor, in their resistance in respect to allegations contained in our supplemental bill as to letters that were sent out by Mr. Thompson. We say in the supplemental bill—make allegation as to what those letters contained that were sent out. They also in their answer,

they say that the letters—admit that the letters were sent out and that they are in substance substantially as alleged. Now, then, in their resistance to the motion depositions be not taken that was heard in Dubuque they attached to the resistance copies of those letters to which they again refer in this resistance, and those letters contain the very thing that we allege that they did contain, so there is no occasion to take depositions on that. We will concede that the letters that they attached to those depositions—to that resistance are the ones that our petition referred to, so we [fol. 327] are not in dispute as to what letters they are.

The fact that the mortgage was made, that is admitted; I mean that they recorded that mortgage. That they have admitted. And that of course also again would be a matter of record proved by certified and exemplified copy from Wisconsin of the filing, and certified copy of the Iowa Recorder filing, would not again be a matter of oral testimony except in so far as they have already admitted.

Now, they say this declaration—the bill contains an allegation that the Bridge Company has not done any business with Phoenix Finance Corporation since July. They say that they have denied that. Well, they don't—in their statement of what they propose to show by these witnesses they don't propose to show that the Bridge Company did do any business with Phoenix Finance System, Inc. There is no such claim, and whether they have or have not would not be material, because the ultimate question is what they are doing with respect to the prosecution of the suits in Delaware, and the recording of this mortgage, that that is robbing the Bridge Company of the fruits of its victory, and it seems to me, Your Honor, that there is nothing that they have set up here for the taking of depositions that would serve any useful purpose in this case.

Mr. Schenk: If Your Honor please, the Phoenix Finance Corporation has set forth in the resistance to the motion [fol. 328] filed by the Iowa-Wisconsin Bridge Company, and we can assure the Court that the testimony which is referred to in that resistance which we expect to secure by taking the depositions of Mr. John A. Thompson and Mr. Albert Penn is as we say it will be. In other words if we can take those depositions we expect to prove every point



which we referred to in this resistance, and in the exhibits which are incorporated therein by reference. This resistance incorporates by reference the schedules of testimony attached to the previous resistance which Your Honor had before you at the last hearing in Dubuque, and we wish the Court to take the resistance, together with the schedules of testimony and exhibits incorporated therein by reference, as a definite and formal tender of the testimony of these two men, Mr. Thompson and Mr. Penn. I shall not go into the details because the resistance covers some pages and is explicit on our position, and we wish to present it to the Court as a definite offer of testimony, of exhibits, and of evidence to be considered by the Court in passing upon the motion not to take the depositions.

The Court: But as in the consideration of the previous motion it is your contention that you are entitled to make the proof tendered because Phoenix was not bound by the final decree in the trial of the case originally?

Mr. Schenk: It is our contention that Phoenix was not [fol. 329] bound in respect to the matters which are now raised in suits started in Delaware, or in respect to the \$50,000 mortgage referred to in the supplemental and ancillary bill. In other words we say that upon Mr. Ontjes' application as set forth in the supplemental and ancillary bill we are entitled to make the showing which we now tender, and the testimony and exhibits referred to in our resistance.

The Court: That is all, gentlemen?

Mr. Ontjes: That is all, Your Honor.

The Court: The matter will be submitted.

Mr. Schenk: May I make this inquiry, Your Honor, in the event that Your Honor should hold that any part of this tendered testimony might be taken by deposition, then of course time should be given to Phoenix Finance Corporation to take those depositions, and the hearing upon the merits which has now been set for March 11th we ask to be extended. I dare say the Court will bear that point in mind.

The Court: We will keep the whole situation in mind. This matter will be determined during the day, without doubt.

Mr. Schenk: And may the notes taken by Mr. Turner be filed in the case?

The Court: Yes, it will be so ordered.—Let me suggest that counsel be available during the day.

Mr. Schenk: Yes, sir.

(Record closed.)

[fol. 330]

### Reporter's Certificate.

I, R. C. Turner, a Certified Shorthand Reporter, residing at Sioux City, in the Northern District of Iowa,

Hereby Certify, That on the 5th day of March, A. D. 1940, at Sioux City, in the Northern District of Iowa, I took down in shorthand, correctly, all proceedings had on the hearing on defendant's motion filed February 12, 1940, for order that depositions of John A. Thompson and Albert Penn be not taken, and resistance of Phoenix Finance Corporation thereto, in the above entitled cause, and have transcribed the same; that the above and foregoing is a true and correct translation of my shorthand notes so taken and transcript of all proceedings had on said above mentioned hearing.

March 5, 1940.

R. C. TURNER.

Filed in the District Court March 6, 1940.

[fol. 331] (Order Directing That Depositions of John A. Thompson and Albert Penn Shall Not Be Taken.)

Be It Remembered that on this 5th day of March, 1940, the motion of the defendant Iowa-Wisconsin Bridge Company, filed February 12, 1940, asking for an order that the depositions of John A. Thompson and Albert Penn be not taken, and in the alternative that the scope of the depositions be limited, and the resistance of the Phoenix Finance Corporation filed February 29, 1940, came on for hearing, F. A. Ontjes appearing for the defendant Iowa-Wisconsin Bridge Company and Casper Schenk appearing for the complainant, Phoenix Finance Corporation;

And the Court having examined said motion and resistance and having heard statements of counsel from which it appears it is proposed to prove by said John A. Thompson and Albert Penn, matters bearing upon the issues that were presented and tried in this cause some years ago;

The only material issues to be considered in the supplemental complaint is the matter of the identity of the subjects presented for litigation in the Delaware Courts, and the mortgage described in the supplemental complaint, with the items considered and determined in this cause, and the identity of these items must be determined from the records. That the depositions in question would not be material, that the witnesses whose testimony is noticed to be taken are incompetent to contravene or overcome the record in this case.

[fol. 332] It is, therefore, Ordered that the depositions of John A. Thompson and Albert Penn shall not be taken.

Done and Ordered this 5th day of March, 1940, at Sioux City, Iowa, for entry in the Eastern Division.

Exceptions reserved to the Phoenix Finance Corporation.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court March 5, 1940.

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[fol. 333] (Transcript of Shorthand Notes of Trial on Supplemental and Ancillary Bill of Iowa-Wisconsin Bridge Company, and Answer of Respondent Phoenix Finance Corporation.)

[fol. 337] And now, to-wit, at one o'clock on this 11th day of March, A. D., 1940, at Sioux City, in the Western Division of Iowa, there came on for trial the issues joined by the supplemental and ancillary bill of complaint, and amendment thereto, of the Iowa-Wisconsin Bridge Company, a corporation, and the answer of the respondent, Phoenix Finance Corporation, thereto, before Hon. Geo. C. Scott, United States District Judge; the complainant appearing by its attorneys, F. A. Ontjes, of Mason City, Iowa, and W. C.

Green, of St. Paul, Minnesota, and the respondent appearing by its attorneys, James R. Morford of Wilmington, Delaware, and Casper Schenk of Des Moines, Iowa.

Thereupon the following proceedings were had:

The Court: How long, gentlemen, will it take to make your record in this case.

Mr. Ontjes: It will not take us very long, Your Honor.

Mr. Morford: I should think it would take at least the afternoon. Of course we have no way of knowing definitely what the Court's rulings will be on certain points, and how much testimony thereafter would be at least tendered.

The Court: The Court has made that very clear heretofore that the testimony will be confined to the identity of the adjudications on the former trial with the items in the Delaware cases.

Mr. Morford: And I assume for the purpose of preserving [fol. 338] our record we should at least make formal tenders of certain proof.

The Court: You can do that of course. Have you got it prepared so you can—

Mr. Morford: Yes, sir.

The Court: Then it is very quickly done.

Mr. Morford: It must be done through the medium of witnesses however.

The Court: How is that.

Mr. Morford: It would be done through the medium of witnesses.

The Court: I will not let you use any witnesses.

Mr. Morford: I realize that, but we would still have to call the witnesses and have them sworn and then state to the Court—

The Court: I do not think so. I will not permit that either.

Mr. Morford: So long as we can preserve our record.

The Court: You can preserve your record all right without any call of witnesses.

Mr. Morford: Very well, sir.

The Court: This matter must be determined on the record of the former trial. I made that clear in the previous rulings. Are you ready to proceed?

Mr. Ontjes: I am, Your Honor.

[fol. 339] The Court: Proceed then with the plaintiff's testimony.

Mr. Morford: We are not ready to proceed now, sir. This trial is fixed for two o'clock, as I understood it, and our witnesses and records are at the hotel. We were called down by Mr. McNeely for a conference.

The Court: Well, if that is the attitude why we will wait until two o'clock.

Mr. Morford: It is not necessary to wait until two o'clock, but it is necessary to wait until we bring our records down from the hotel where they were. We had no notice of what Your Honor intended when you sent for us.

The Court: Well, we will wait until two o'clock then.

Mr. Morford: Will it be here or in the court room?

The Court: It will be right here.

Mr. Morford: All right, sir.

(1:40 o'clock P. M., March 11, 1940.)

The Court: Now, gentlemen, this corner being much warmer and less drafty than my usual chair, I am going to request that you forego formalities and let me remain over here.

Mr. Ontjes: That is all right; splendid idea, Your Honor.

Mr. Morford: I might say to Your Honor, it being now 1:40, that the defendant is ready to proceed.

[fol. 340] The Court: Proceed then.

Mr. Ontjes: Our side should proceed first.

Mr. Morford: I wanted to report to the Court that we were ready. I last stated that we were not ready.

## Complainant's Evidence.

Mr. Ontjes: If your Honor please, we want to ask Your Honor to take judicial notice of all the pleadings filed in this case, and all the depositions taken, and all the evidence taken, and the transcripts of such evidence, and of the Master's report, and of the exceptions filed to such report, and the opinion, order and decree of this Court made with respect to the exceptions to the Master's report, and final decree in this cause; also the application or petition for rehearing filed by Phoenix Finance Corporation, and the supplemental opinion and order of this Court with respect to that.

And we ask the Court, that, without exception, to take judicial notice of all the records, papers and files in this cause in connection herewith.

And we also offer in evidence all of them, and we want to offer in addition in evidence—I suppose the Court take judicial notice that that is the opinion of the Circuit Court of Appeals in this particular cause as reported in 98 Federal, 2nd Series, page 416.

And, if Your Honor please, we now offer—Maybe the [fol. 341] reporter should mark these as exhibits.

Mr. Morford: Should I perhaps make some comment with respect to each such offer?

Mr. Ontjes: Mr. Green calls my attention: and also take judicial notice of the mandate of the Circuit Court of Appeals that is now on file here in this cause.

Mr. Morford: Before making any comment on the offer of evidence may I ask that the reporter be sworn in this case so he will have an official status?

(Robert C. Turner was thereupon duly sworn by the Clerk as the official shorthand reporter of this proceeding.)

Mr. Morford: Mr. Ontjes has made certain offers of the records of this case. A few days ago my associate, Mr. Schenk, requested Your Honor that all the original records in this cause be transferred from Dubuque to Sioux City for this particular hearing. I understand that Your Honor denied that request. May it so appear?



The Court: No, it may not so appear. The records are all here. The request was that I would take the responsibility of having brought them here by truck.

Mr. Morford: I understand that the records then are all here and are available for use by either side?

The Court: Yes.

Mr. Morford: Mr. Ontjes has offered in evidence, as [fol. 342] I understand it, these records physically. At the outset I understood him to say that the Court should take judicial notice of those records. As to that we would of course have no objection. We do object to the records being offered in evidence and physically admitted as exhibits in this hearing because we feel that that is not necessary. We think that the Court may and should take judicial notice of anything which constitutes a part of the record in this cause without the necessity of tendering those exhibits in evidence, and you will realize how burdensome it would be to the defendant if on an appeal in this case it would become necessary to have all of those records printed all over again. They have already been printed once, and I should think that the physical offering of those records now is not necessary. We therefore object to that.

The Court: I don't really see the distinction. If the Court is to take judicial notice of the entire record then it is in evidence.

Mr. Morford: It is already in evidence, such parts as are already in evidence are there.

The Court: Yes, I so understand.

Mr. Morford: And no further offer would be necessary.

The Court: No, I don't think any further offer would be necessary, but I don't see that the double offer is prejudicial. [fol. 343]. It does not really change the situation as far as I can see.

Mr. Morford: I would regret it very much, Sir, if we would have to print them all over again.

The Court: You would not have to print more than was necessary to meet the issue in this supplemental complaint,

and that is only those parts of the record that bear upon the identity of the items adjudicated and now pending in the courts of Delaware.

Mr. Morford: May I suggest that we merely stipulate that both sides in this case before Your Honor shall have the right to refer to any exhibit of record in this cause which has been admitted in evidence in this cause, without the necessity of a formal tender. I believe that will simplify the record considerably if you will so stipulate.

Mr. Ontjes: Well, I would sooner just let the record stand in the case.

Mr. Morford: Perhaps it is because I am not familiar with your practice. Do I understand that the papers now offered are exhibits in the case without any—

Mr. Ontjes: These that I am now starting to offer are the certified and exemplified copies of the Delaware suit.

Mr. Morford: You will offer them?

Mr. Ontjes: I will offer those formally, yes.

[fol. 344] Mr. Morford: May I suggest that in view of the many numbers and letters that have been used heretofore that we refer to these exhibits as S. C.-1, 2, and 3, and so on, to distinguish them from letters and numbers that appear in this case.

The Court: What would that S. C. indicate?

Mr. Morford: Sioux City; or some other designation, I don't care what it is.

(Exhibit "SC-1", Certified and exemplified copies of files in cause No. 39, Superior Court of New Castle County, Delaware;

(Exhibit "SC-2", Exemplified copy Bill of Complaint, Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company; Court of Chancery, New Castle County, Delaware;

(Exhibit "SC-3", Exemplified copy of files in cause No. 65, Superior Court of New Castle County, Delaware;

(Exhibit "SC-4", Exemplified copy of files in cause No. 64, Superior Court of New Castle County, Delaware;

(Exhibit "SC-5", Exemplified copy of files in cause No. 79, Superior Court of New Castle County, Delaware;

(Exhibit "SC-6", Certified copy of mortgage, Iowa-Wisconsin Bridge Company to Phoenix Corporation, recorded in Allamakee County, Iowa;

(Exhibit "SC-7", Exemplified copy of mortgage, Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation, [fol. 345] tion, recorded in Crawford County, Wisconsin:

marked for the complainant Iowa-Wisconsin Bridge Company.)

Mr. Morford: Before this new group of documents is presented to the Court and offered in evidence I would like to know whether or not the Court proposes to rule upon the other records that were offered generally in evidence a few moments ago, and in order that the Court may have before it clearly what that offer comprehended I would like to have the reporter read Mr. Ontjes' statement as to what he did offer, because I would like to know certainly by the time I complete this hearing what is in evidence and what is not.

(As requested the record was read by the reporter, commencing with line 6 on page 6 of this transcript, to and including line 6 on page 7 of this transcript.)

Mr. Morford: As I stated, Your Honor, I have no objection to the Court taking judicial notice of any record constituting a part of the pleadings or evidence admitted in this cause. I did state an objection to the admission of any of those records in evidence, and I did not understand whether the Court had ruled and ordered they were or were not in evidence.

The Court: Your objection is to the admission of any of those matters?

Mr. Morford: Yes.

[fol. 346] The Court: Then that would be overruled. I do think, however, that the offer should be confined to such parts of the record as pertain to the subjects of the Delaware suits.

Mr. Morford: It would be much easier, of course, for me to state specific objections if the offer were more specific, and I think it should be specific as to what papers are so offered, because there are certain documents to which I would want to make a specific objection, and I cannot address myself to any such specific objections unless there is a specific offer.

At this point is there anything in evidence on behalf of the plaintiff? Perhaps it is my unfamiliarity with your practice, but I would like to know whether there is any exhibit in evidence on behalf of the plaintiff?

The Court: I think they are all in evidence. If the Court is to take judicial notice of them all, and you both agree that the Court should do so, I think that puts them in evidence.

Mr. Morford: Very well, sir. Now, may I have an exception to Your Honor's ruling on that?

The Court: It is wholly unnecessary. The exceptions are abolished under the rules of civil procedure.

Mr. Morford: May I direct Your Honor's attention to one particular document which may be considered in evidence in this cause under the wholesale tender and the ruling of the Court, and that is the deposition of John A. Thompson taken at Des Moines, Iowa. That deposition, sir, was not offered in evidence in whole or in part in this cause. Mr. Thompson was present and testified as a witness, being called as a witness on behalf of the intervener. Accordingly his deposition could not have been used in any event in view of the fact that he was present unless it were used for the purpose of contradicting his testimony. There was no such contradiction. There was no such offer for the purpose of contradiction. There was no offer of the deposition itself. And there was no ruling by the Master or by the Court admitting that deposition in evidence. Your Honor, at the time an application was made with respect to the printing of certain records for the Circuit Court of Appeals, said that the deposition might be printed for the purpose of the consideration of the issue as to whether the lower court abused its discretion in denying the petition for rehearing, but for no other

purpose, so that deposition is not a part of Your Honor's record in this cause, and we do object specifically to that deposition and ask that it be stricken from the records in this cause.

Mr. Ontjes: Mr. Morford don't have in mind, Your Honor, all the record in this cause. Mr. Thompson's deposition was taken in Des Moines. Subsequently at the trial [fol. 348] he was a witness on the part of the defendant and there were certain questions and answers asked of him as to his testimony on the former deposition, whether he didn't so testify thus and so. Upon not admitting that, those portions were offered in evidence. Subsequently in this trial they made application for a petition for rehearing and claimed that they had been wholly—that they hadn't—that many of these matters they had known about and the question—we at that time filed a resistance to their petition for rehearing and making Mr. John A. Thompson's deposition as a part of our resistance to the petition for rehearing, and then they appealed from the order of the Court denying the rehearing in the Circuit Court of Appeals. We asked Your Honor that the deposition be published—printed as part of the resistance to their petition for rehearing, and the Court so ordered.

Mr. Morford: But for no other purpose, and I would be very glad if Mr. Ontjes would point out anywhere in the record where this deposition or any part of it was offered in evidence in this case. Mr. Ontjes has just made that assertion and I would like him to point out where it was offered in evidence because I have made the assertion to Your Honor that it was not offered.

Mr. Ontjes: If you will read the transcript, Mr. Morford, if you will read the transcript in the trial you will [fol. 349] find that at certain points certain specific questions with respect to his testimony on the deposition were called to Mr. Thompson's attention, and that those certain parts of the deposition were offered in evidence. I am not saying that the deposition as a whole was offered in evidence, but those certain parts were offered.

Mr. Morford: Now, can you show where any part of the deposition was offered in evidence?

Mr. Ontjes: Not without the transcript, Mr. Morford. You have a copy of that, do you not?

Mr. Morford: Will you admit then, Mr. Ontjes, that the whole deposition was not offered in evidence, your contention being that only certain parts of it were offered?

Mr. Ontjes: Certain parts of it were offered in evidence.

Mr. Morford: Then even on that admission—

Mr. Ontjes: And subsequently on the matter relating to the petition for rehearing we incorporated it as a part of our resistance, making the whole thing in evidence then before the Court on that question, so I think that it is in this case.

Mr. Morford: The Court said it was only admitted for that purpose solely, and I move you, sir, that that deposition be excluded and specifically that it be stricken from the records in this cause.

[fol. 350] The Court: Overruled.

Mr. Morford: It is understood of course, as Your Honor pointed out a moment ago, that specific exceptions are no longer necessary.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-1", certified and exemplified copy of the Delaware court of the summons and declaration in cause 39 described in the supplemental and ancillary bill herein.

Mr. Morford: In which paragraph of the supplemental and ancillary bill?

Mr. Ontjes: It is on 7-A.

Mr. Morford: 7-A. And that is the suit relating to what general subject; the \$2000 note and the \$3125 note, isn't it?

Mr. Ontjes: I think so, yes.

Mr. Morford: This is objected to, if the Court please, this is an exemplification only of the summons and declaration in the cause referred to; it does not show the appearance on behalf of the defendant Iowa-Wisconsin Bridge Company; it does not show the pleas filed by Iowa-Wisconsin Bridge Company, including specifically the plea of res



adjudicata, which raised the issue as to the effect of Your Honor's adjudication in the former suit; it does not show that that cause was tried upon its merits before the Court, briefed, argued, and is now pending decision. In other [fol. 351] words the record offered is not a complete exemplified record of that proceeding as the same exists today, or within a reasonable period of today.

The Court: Overruled.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-2", being the bill of complaint filed in the Chancery Court of Delaware described in paragraph—and refers to the action described in paragraph 7-B of the supplemental and ancillary bill herein, and which relates to the 517 shares of stock.

Mr. Morford: This is objected to for the reason that the exemplification offer includes only the bill of complaint, it does not show the subpoena issued on the bill of complaint, the service on the defendant, the general appearance by solicitors on behalf of the defendant, the answer filed by the defendant raising the objection of res adjudicata, and referring particularly to the adjudication of Your Honor in this cause, and it does not show the present status of that cause as now pending in the Court of Chancery in the State of Delaware.

The Court: Overruled.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-3", being the summons, affidavit of demand and writ, together with narr, in cause No. 65 described in the supplemental [fol. 352] and ancillary bill of the defendant herein in paragraph 7-C of that bill.

Mr. Morford: What is that case about? That is objected to for the reason that it is incomplete, it does not show the appearance generally on behalf of the defendant, the defendant's pleas, including pleas of res adjudicata, or replications and present status of that proceeding.

The Court: Same ruling. Overruled.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-4", being the summons, certified exemplified copy of summons and declaration in the Delaware suit described in paragraph

7-D of the supplemental and ancillary bill herein, being known as suit No. 64 pending in the Superior Court of Delaware.

Mr. Morford: That is objected to because the exemplification is an incomplete record of that cause, and as offered consists only of the writ and declaration, there being omitted therefrom entirely the pleas of the defendant, which shows that the defendant pleaded res adjudicate in that cause, the appearance of the defendant showing a general appearance by attorneys for the defendant, the replications of the cause, and does not show the present status thereof.

The Court: Overruled. Is there any objection where the objection interposed is identical with one just preceding—can't that be shortened without repetition?

[fol. 353] Mr. Morford: I will try to do so, sir.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-5", being a certified exemplified copy of summons affidavit, of demand, and writ with narr, filed in the case 79 in the Superior Court of Delaware, and referred to and described in the supplemental and ancillary bill in paragraph 7-E.

Mr. Morford: Objected to for the same reasons heretofore stated with respect to the last offer.

The Court: And the same ruling.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-6", being a certified copy of mortgage referred to in the Supplemental and ancillary bill as having been caused to be filed or recorded by the Phoenix Finance Corporation in Allamakee County, in the State of Iowa, in the Recorder's office, Allamakee County, State of Iowa.

Mr. Morford: The paper offered is a copy, and in order that we may not take time at this moment may we have the opportunity to check the paper offered for accuracy?

The Court: Certainly.

Mr. Morford: May it also be stipulated that this same mortgage is recorded in Crawford County, Wisconsin,

where a large part of the property subject to the mortgage is located?

[fol. 354] Mr. Ontjes: I am just about to offer, Mr. Morford, as the next paper the certified exemplified copy of that mortgage as recorded in Crawford County, Wisconsin.

Mr. Morford: Very well, then, as to the offer of Exhibit "SC-6" we have no objection subject to checking the paper for accuracy.

Offer: Mr. Ontjes: We offer in evidence Exhibit "SC-7", being a certified exemplified copy of the same mortgage recorded in the office of the Registrar of Deeds of Crawford County, Wisconsin.

Mr. Morford: Subject to our ability to check the paper offered for accuracy we have no objection.

Mr. Ontjes: We want to offer a portion from the resistance of defendants that they presented at Dubuque with respect to the application for an order that depositions be not taken, first, it is alleged in paragraph 9 of the supplemental and ancillary bill that Mr. Thompson made certain assertions at certain stockholders' meetings with respect to the litigation. The answer admits this part, it is said "that there were six cases in the State of Delaware that would be carried on in the course of the next few months."

Now, in their resistance I want to simply put in a few [fol. 355] statements of what they claim in their resistance. He said, "Mr. Ontjes has stated here and he stated in the December meeting, that the litigation between Phoenix and the Bridge Company was all over. Now, in the first place there never was any litigation between Phoenix and the Bridge Company."

That is on page 2 of their resistance.

(Reporters' note: The above quotation is from page 2 of the schedule of testimony of John A. Thompson, rather than page 2 of the resistance itself.)

Mr. Ontjes: And on the top of page 6 of the same resistance:

(Likewise the following quotation is from page 6 of the schedule of testimony of John A. Thompson attached to the resistance, and not the resistance itself.)

"Now, this indebtedness can be properly presented and evidence can be put down in the Delaware court. That is now being done. There are six cases down there now that will be carried on through the courts in the next few months, the one I have just described was heard—it is all finished except the decision of the court, perhaps a brief due on the 13th, and a decision of the court, which they promise by the first of August, and five others to follow."

We have alleged, Your Honor, in the bill of complaint, supplemental and ancillary bill we allege that Mr. Thompson [fol. 356] sent letters—he wrote certain letters to stockholders and to directors, one of those being as of November 23, 1939. In our bill of complaint we allege that Mr. Thompson wrote:

"I am not asking you or any other man to help me or to help Phoenix. Phoenix does not need any help—"

The Court: Mr. Ontjes, what is the purpose of reading this now?

Mr. Ontjes: I am simply going to offer from their own letters, Your Honor.

The Court: Make your offer.

Mr. Ontjes: All right, I will offer—

Mr. Morford: May I suggest that we may consider that the resistance, the two resistances filed by Phoenix Finance Corporation in this case are evidence, constitute evidence in this case for either party, together with all schedules and exhibits attached thereto?

Mr. Ontjes: Oh, no, no, no.

Mr. Morford: I think they are part of the record of the case in any event, and an offer would not be necessary.

Mr. Ontjes: We are not agreeing to that which you set up in your schedules that it is all evidence.

Mr. Morford: I don't see where you can offer a part of it without them all going in.

Offer: Mr. Ontjes: We offer in evidence the letter marked "Exhibit "A", dated November 23, 1938, attached

[fol. 357] to the resistance of Phoenix Finance Company's resistance.

The Court: What is the purpose of the offer, Mr. Ontjes?

Mr. Ontjes: Why, the purpose of those offers, Your Honor, and the reasons for the allegations in the bill with respect to these letters was principally as showing that the defendant did not intend to carry out the orders of this court, that is the purpose of it. That is all there is to it.

Offer: Mr. Ontjes: Then we offer in evidence Exhibit "B", which is a letter dated June 12, 1939, attached to the same resistance.

Mr. Morford: The letters referred to are a part of the record in this cause. We do not think an offer of those papers in evidence is necessary at this time.

The Court: Well, the fact that they may be offered, if they are already in it does not make the offer prejudicial.

Mr. Morford: I think that would be the position.

Mr. Ontjes: I think, Your Honor, that that completes the evidence on the part of the complainant.

The Court: Evidence on the part of the defense.

Mr. Ontjes: I might say, Your Honor, that when we drew the bill of complaint, drew the supplemental and ancillary bill, we did not then know that they had also recorded that mortgage in Crawford County, Wisconsin, but [fol. 358] of course the bill contains a general prayer for relief, so I don't think that in order to ask for discharge of the mortgage in both places would require an amendment, because there is a general prayer for relief.

Mr. Morford: If Your Honor pleases, I am still somewhat troubled in that I do not know just what has been put in evidence on behalf of the plaintiff in the general offer made at its opening, and in that connection I would point out to Your Honor as I have been advised that there are among the papers and documents in Mr. McNeely's possession as Clerk in this particular case over one hundred separate papers of various kinds that were never offered in evidence in this case, and there is not a scintilla of a rec-

ord to support their admissibility. Now, are we to be faced in this or any subsequent proceeding in this cause, Your Honor is now hearing, with such documents, documents that were never offered, never have been offered?

The Court: You will not be faced with anything that is not a part of the record of the previous trial.

Mr. Morford: I would like the privilege of making a rather short opening statement to Your Honor in order that our position may be clear, and I think that perhaps will enable all parties to proceed much more rapidly.

The Court: Proceed.

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[fol. 359]            Respondent's Evidence.

Mr. Morford: A very substantial portion of the evidence on behalf of Phoenix Finance Corporation is the evidence shown by the schedules of testimony of John A. Thompson, Albert Penn, Lee J. Skoner, George Preuss, and Edgar S. Gage, with the exhibits attached to those schedules, and which schedules and exhibits are attached to the resistance and are made a part of the resistance of Phoenix Finance Corporation filed in this cause.

Your Honor denied the right of Phoenix Finance Corporation to take the depositions of those witnesses, and Your Honor's ruling in that respect is quite clear, to which there has of course been preserved a proper exception. Two of those witnesses, Gage and Preuss are not available for the hearing today. They live more than a hundred miles from Sioux City; they cannot be produced, and they are not subject to subpoena. Therefore as to those witnesses we stand entirely upon the record of our attempt to take their depositions and Your Honor's denial of that right.

With respect to the witnesses John A. Thompson, Albert Penn, and Lee J. Skoner, these three persons are available in person at this trial. They are here now. We desire to call each one of those witnesses, have each such witness sworn, and to have each witness testify to the same facts that are stated in the respective schedules of testimony [fol. 360] attached to the resistance.



Another point in connection with the position of Phoenix Finance Corporation is this: Your Honor has stricken from the record a large part of the answer and counterclaim of Phoenix Finance Corporation, and you have stricken from the record the allegations—particular allegations relating to charges of fraud and deception practiced upon the court as alleged, which induced Your Honor's opinion below, as was charged. Now, we take the position, Your Honor, that that is not a matter which requires pleading, and even though Your Honor may have stricken allegations to that effect from the answer the legal situation nevertheless is that if any party to a cause at any time can direct to the attention of the court circumstances of fraud and deception that have been practiced upon the court, the court will, on the application of any party, or perhaps on its own motion, review its findings for the purpose of ascertaining any irregularities which may have occurred as a result of fraud. That is an application of the principle announced by Lord Reasdale many years ago, the Lord Reasdale rule which was argued and briefed at an earlier stage of this same proceeding, and with which Your Honor is no doubt familiar. So we propose at this time to offer evidence for the purpose of amending the record, but for the purpose of showing the facts with respect to certain findings of fact, both of the Master and of the Court. They are findings of fact [fol. 361] in which we earnestly contend there is nothing in the record of this case to support them; that your Honor was imposed upon by assertions contained in the briefs, motions and oral arguments of the attorneys for the Bridge Company, and that the actual facts are not only not shown by the record, but are diametrically opposed to what those findings are.

For the purpose of pointing out those circumstances of fraud, and in showing clearly the application of Lord Reasdale's rule, we propose to offer certain evidence in connection with our allegations of fraud and deception of course in addition thereto, but this is more a legal than a factual argument. We direct Your Honor's attention to Section 265 of the federal judicial code, which provides that the writ of injunction—I am quoting—

“The writ of injunction shall not be granted by any court of the United States to stay proceedings in any court of a state except in cases where injunction may be authorized by any law relating to proceedings in bankruptcy.”

And we refer particularly to the most recent adjudication of the Supreme Court of the United States on that point as contained in the case of *Oklahoma Packing Company vs. Oklahoma Gas & Electric Company, et al.*, decision of January 15, 1940. My citation is in 84 *Lawyers* [fol. 362] Edition, page 329, advance sheet No. 6, in which the Supreme Court held in line with many earlier decisions that where a court enjoins a party from proceeding with an action in another jurisdiction it is exactly the same thing as though the court were purporting to enjoin the court itself, and that that may not be done.

It is our purpose of course to show that in each one of the cases in Delaware that are sought to be enjoined in this proceeding, the defendant has available [and] adequate legal and equitable defense, namely, the defense of *res adjudicata* which has been raised, pleaded, and in at least two of those cases argued, briefed, and is now under advisement by the court. When Mr. Outjes offered in evidence certain records with respect to the six actions pending in the State of Delaware, five in the Superior Court, and one in the Court of Chancery, I objected to each document as presented because it was not complete. I now desire to have the reporter mark exemplified records of each of these proceedings with an appropriate notation, and to offer the exemplified records in evidence on behalf of the defendant.

(Exhibit “SC-101”, Exemplified court files, cause No. 39, Superior Court of New Castle County, Delaware;

(Exhibit “SC-102”, Exemplified court files, cause entitled *Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company*, Court of Chancery, State of Delaware.

[fol. 363] (Exhibit “SC-103”, Exemplified court files, cause No. 65, *Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company*, Superior Court, State of Delaware, New Castle County;

(Exhibit "SC-104", Exemplified court files, cause No. 64, Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company, Superior Court, State of Delaware, New Castle County;

(Exhibit "SC-105", Exemplified court files, cause No. 79, Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company, Superior Court, State of Delaware, New Castle County:

marked for the respondent.)

Offer: Mr. Morford: I now offer in evidence Exhibits "SC-101", "SC-102", "SC-103", "SC-104", and "SC-105", the same being the complete exemplified copies of the records and docket entries in the same proceedings referred to in the plaintiff's offers "SC-1", "SC-2", "SC-3", "SC-4" and "SC-5". Is there any objection? Are these objected to?

Mr. Ontjes: No objection, no.

Mr. Morford: I would call Your Honor's attention to the fact that there is a certain cause of action alleged in the bill of complaint in paragraph 7-F thereof which we commonly speak of as the bridge toll ticket case, and which would be the sixth Delaware action, in connection with [fol. 364] which the plaintiff has not seen fit to offer any evidence, and which is not covered by the preliminary restraining order in this case. Is it proper to assume that it is out of the case?

The Court: I so understand it.

Mr. Ontjes: That is correct, Your Honor, that is out of the case; preliminary injunction did not apply to it and we are not pressing it any further; the Court didn't grant the injunction on that.

Mr. Morford: Very well.

Mr. Morford: I would like to call John A. Thompson as a witness and have him sworn in this case.

The Court: For what purpose?

Mr. Morford: In connection with Mr. Thompson's testimony I desire to show the following: In the first place I wish to—

The Court: You may state briefly the character of the testimony you desire to offer without going into a recitation of the testimony.

Mr. Morford: In the first place I desire to make formal tender through John A. Thompson of all of the facts contained in the schedule of the testimony of John A. Thompson filed as an exhibit and schedule to the resistance of Phoenix Finance Corporation in this cause. With respect to those facts Your Honor refused Phoenix Finance Corporation the privilege of taking Mr. Thompson's deposition. We desire to offer his evidence with respect to those same facts, and all of those same facts, each and every part of his schedule of testimony.

In addition we desire to offer the testimony of John A. Thompson to show that Phoenix Finance Corporation at all times complied with the order of Judge Molyneaux entered in this cause under date of April 24, 1934, and appearing in the printed record on pages 97 and 98, which order reads as follows: and I quote:

"Ordered that the defendant Phoenix Finance Corporation produce at its office in Des Moines, Iowa, all its books and records appertaining to the business and affairs of Iowa-Wisconsin Bridge Company, within ten days from the date of this order, and submit them to the inspection of the intervener and his counsel and accountant."

In Your Honor's opinion dated March 4, 1937, as the same appears in the printed record, pages 410 to 413, Your Honor stated, and I quote:

"The interveners obtained an order of court for the production of the books and records—"

The Court: I don't think that we should take the time to read these matters into the record. You have sufficiently identified the subject upon which you desire to offer the testimony I would think.

[fol. 366] Mr. Morford: Yes. In connection with that I can merely add that in view of the fact that Your Honor

denied the petition for rehearing upon that ground we believe that we are entitled to show that there was at all times full and complete compliance by Phoenix Finance Corporation with the order of this court, and that assertion of fact which must have been taken by Your Honor from the various briefs and oral arguments of counsel, is not in accordance with the fact, and is not supported by the record. In other words, I do not want to take the position or have Your Honor think I am taking the position that I am saying Your Honor was wrong in a certain finding and therefore you should correct it. That is not my point. I say Your Honor made a certain finding of fact, and there is nothing in the record to support that finding of fact, and that the fact is the contrary, that Your Honor was imposed upon by fraud and misrepresentation on the part of counsel. We desire to direct Your Honor's attention to that fraud and to that end offer testimony to show that fact.

The Court: Is that your offer?

Mr. Morford: There is more, Your Honor. We desire further to have Mr. Thompson testify to the same facts as are contained in his affidavits filed in connection with the petition for rehearing of Phoenix Finance Corporation, the affidavits being found in the printed record at pages 230 [fol. 367] and 355, and if Mr. Thompson is permitted to testify he will testify to the same effect as stated in those affidavits.

We further desire to offer testimony by Mr. Thompson to show that Phoenix Finance Corporation at no time in this case had an opportunity to offer evidence on its behalf, although it at all times was ready, willing and desirous of so doing. Your Honor held in this case that the trustees had exclusive control of the litigation. Mr. Rex Fowler was the attorney for the trustees. We propose to show through Mr. Thompson that he was told by Mr. Fowler that the time had not come for Phoenix to take any part in the proceedings, that the evidence offered against Phoenix by the interveners was premature and not necessary; that there had been a *prima facie* showing of consideration for the bonds, and that at that time it was not necessary for

Phoenix Finance Corporation to rebut any of the evidence so offered.

We desire to prove through Mr. Thompson that Phoenix Finance Corporation had its witnesses physically present on one or more days at the hearing before the Master to testify, ready to testify on all of the issues which are now being asserted against it, and that Mr. Fowler, the attorney for the trustees, who had control of the litigation, stated it was not necessary at that stage of the proceeding.

In that connection we desire to offer, after proof of the same by Mr. Thompson, a letter from Rex Fowler to Mr. [foi. 368] J. W. Kindig, the Special Master in this cause, dated July 25, 1935, which I will ask the reporter to mark as Exhibit "SC-106".

(Exhibit "SC-106", Letter dated July 25, 1935, Rex Fowler to J. W. Kindig, marked for the respondent.)

Mr. Morford: With respect to the \$50,000 mortgage, the record of which has been offered in evidence by the plaintiff, we desire to prove by Mr. Thompson particularly that Phoenix Finance Corporation at no time was given the opportunity, in fact that it was denied the opportunity, to present evidence to prove the consideration for that \$50,000 mortgage, and to prove the affirmative of the proposition that the Bridge Company did actually receive the consideration for that mortgage in the form of two checks of \$35,000 and \$15,000 respectively.

I desire through Mr. Thompson to point out to the Court that those two checks were not offered in evidence in this case, are not a part of the record in this case, and through Mr. Thompson's identification to offer those checks in evidence. I am informed that those checks are physically in the possession of the Clerk somewhere among the records so we cannot physically have them marked at the moment, but they are not identified by exhibit numbers on the record, and we desire to make a record and a formal tender of those checks as evidence.

[fol. 369] In connection with the consideration for the \$50,000 mortgage we desire to offer in evidence the following records:



First, the minutes of the Board of Directors of Iowa-Wisconsin Bridge Company, dated March 11, 1931.

Second, the minutes of the Board of Directors of Iowa-Wisconsin Bridge Company, dated November 10, 1931.

Third, the minutes of the Board of Directors of Iowa-Wisconsin Bridge Company, dated December 22, 1931.

Fourth, the minutes of the Board of Directors of Iowa-Wisconsin Bridge Company,—

Mr. Ontjes: Are you now trying to recite into this record something new, or something that is in the record? The minutes are in the record.

Mr. Morford: I am making an offer of evidence.

The minutes of the Board of Directors of Iowa-Wisconsin Bridge Company, dated March 7, 1932.

Fifth, Stockholders' meeting of the same company on March 10, 1931.

Sixth, the stockholders' meeting, Iowa-Wisconsin Bridge Company of December 22, 1932.

In connection with Mr. Thompson's testimony we also desire—

Mr. Ontjes: Have you now made an offer, did I understand you, Mr. Morford? You keep right on talking. I [fol. 370] don't quite understand. Are you making offers or what are you doing? If you are making an offer I am going to object to it.

Mr. Morford: I will make my formal offer Mr. Ontjes after I have completed my statement as to what we intend to prove by Mr. Thompson.

Mr. Ontjes: You have thus far made no offer then?

Mr. Morford: I have thus far made no offer, that is correct.

In connection with Mr. Thompson's testimony I desire to identify and offer in evidence a letter dated March 15, 1932, from Iowa-Wisconsin Bridge Company to Phoenix Finance System, Incorporated, which I will ask the report-

er to mark—a copy of that letter I ask the reporter to mark as Exhibit “SC-107”.

(Exhibit “SC-107”, Copy of letter dated March 15, 1932, from Iowa-Wisconsin Bridge Company to Phoenix Fiance System, marked for the respondent).

Mr. Morford: In connection with Mr. Thompson’s testimony I also propose to identify and offer in evidence letter of Phoenix Finance System, Inc., to Iowa-Wisconsin Bridge Company, dated March 15, 1932, a copy of which is marked by the reporter as Exhibit “SC-108”.

(Exhibit “SC-108”, Copy of letter dated March 15, 1932, from Phoenix Finance System to Iowa-Wisconsin Bridge [fol. 371] Company, marked for the respondent.)

Mr. Morford: In connection with these last two exhibits, when I offer the same in evidence formally I will present to the attorney for the plaintiff the original of each such letter and ask to substitute the copy as the exhibit. I will come back to that in a moment.

In connection with Mr. Thompson’s testimony we desire to identify and prove letter of Iowa-Wisconsin Bridge Company to Standard Shares Holding Company, dated March 11, 1931, with the acceptance of Standard Shares Holding Company noted at the bottom thereof, and with the resolution of the Board of Directors of Standard Shares Holding Company attached thereto. I am asking the reporter to mark the copy of the original of that letter as Exhibit “SC-109”.

(Exhibit “SC-109”, Copy of letter dated March 11, 1931, Iowa-Wisconsin Bridge Company to Standard Shares Holding Company, marked for the respondent.)

Mr. Morford: And while I will offer the original of that letter in evidence I will ask that the copy as so marked be substituted for the original. May I just hand these to you in a moment Mr. Ontjes? I will come back to them very shortly.

In further connection with the \$50,000 mortgage we desire to prove through Mr. Thompson a further advancement by Phoenix Finance System to and for the account [fol. 372] of the Bridge Company of the sum of \$9000,

under date of November 10, 1931, a sum of money which was used for paying a lienor on the bridge, namely, Kremer & Hog.

In that connection we would direct Your Honor's attention to the terms of the mortgage itself which is in evidence in this case, in which the Bridge Company gave to Phoenix Finance System the power as attorney-in-fact for the Bridge Company to "pay all liens of any kind, whether prior or subsequent, that may in any manner affect the title to the lands", and, later, "and for the repayment of all monies so paid, together with interest thereon at the rate of eight per cent per annum, payable semi-annually, this indenture shall be like security in like manner—"

The Court: Now, Mr. Morford, we might as well get to a showdown on this. I am not going to let all this go into the record here. You are perfectly entitled to identify and indicate to the Court what you want to prove.

Mr. Morford: That is what I am trying to do, Your Honor.

The Court: But not to go on and prove it. We are not going to accept detailed and lengthy evidence here that you want to put in. All I want you to do is to indicate and identify what you want to prove.

Mr. Morford: When I stated to Your Honor that propose to prove through Mr. Thompson the advancement [fol. 373] of \$9000 on or about November 10, 1931, if made that bare assertion it would have no meaning unless I explain to you just why we desired to offer it, and all I have done is to read a portion from the mortgage which is an exhibit in this case. I had read a portion of the applicable part of that mortgage; there was I believe but another sentence. If Your Honor will permit me I would like to complete that.

The Court: Proceed to the end, but let us not take too much time to these matters, because it is evident that it all proceeds upon an attack on the original adjudication.

Mr. Morford: The mortgage which is in evidence in this case is Exhibits "SC-6" and "SC-7", and it provides that the Phoenix Finance System shall have power as at-

torney-in-fact for the Bridge Company to "pay all liens of any kind, whether prior or subsequent, that may in any manner affect the title to the lands."

At another point it is provided by these same instruments that "for the repayment of all monies so paid, together with interest thereon at the rate of eight per cent per annum, payable semi-annually, this indenture shall be like security in like manner and with like effect as for the payment of said note."

We propose to prove, to offer the testimony of Mr. Thompson to the effect that Kremer & Hog had a mechanic's lien on the bridge; that this money was advanced [fol. 374] by Phoenix Finance System for the purpose of paying that lien, and for the purpose of showing that this mortgage is for a principal sum of \$59,000 instead of \$50,000, as it reads upon the face thereof.

We also desire through the testimony of John A. Thompson to offer evidence with respect to the alleged control of Thompson and the so-called Thompson companies of the Iowa-Wisconsin Bridge Company and of the Board of Directors, and to this end we will offer the testimony of John A. Thompson to the effect that Phoenix Finance Corporation, or any predecessor in interest, or associate, or associates, did not and does not own fifty-one per cent of the voting stock of Iowa-Wisconsin Bridge Company, and that testimony is directed to all of the times involved in this litigation.

We propose to show all of the facts in that connection, and to show that Mr. Thompson, Phoenix Finance Corporation, Phoenix Finance System, Thompson & Company, and no associate or affiliated company or individuals at any time controlled either Iowa-Wisconsin Bridge Company or any of the individual members of its Board of Directors.

I also propose through Mr. Thompson to identify the special report of the examination of the business and affairs of the Bridge Company made by Ernst & Ernst, certified public accountants, and certified to under date of January 17, 1940. That instrument itself will be physical-[fol. 375] ly offered in evidence through another witness.

We further offer the testimony of John A. Thompson to prove the facts in connection with the cases referred to in paragraph 7-B of the ancillary and supplemental bill of complaint, that is the suit in the court of chancery of the State of Delaware which is the subject of Exhibit "SC-2" and Exhibit "SC-102".

There is a very distinct issue of fact framed by the pleadings in this case on one point in connection with that suit. It is alleged in the bill that these shares were "surrendered and cancelled at the time said Phoenix Finance Corporation fraudulently procured the issuance of \$60,500 of bonds involved in and as found in this action." The quote begins with "surrendered" and ends with "action." This allegation of fact is denied in the answer, so there is an issue in that respect, and we propose to prove through John A. Thompson that these shares have not been surrendered and cancelled, that they are still on the books of the Bridge Company as treasury stock, and that the actual certificate for the 517 shares in the name of Iowa-Wisconsin Bridge Company is in the possession of Your Honor's receiver.

We had expected through Mr. Thompson to show to Your Honor the facts and circumstances with respect to the toll ticket case, but that is now not involved in this case.

Through John A. Thompson we propose to identify and [fol. 376] offer in evidence a transcript of Mr. Thompson's statements at a stockholders' meeting of Iowa-Wisconsin Bridge Company held on July 8, 1939, and taken by Vernon L. Grant, a shorthand reporter. That particular document I will ask the reporter to mark as Exhibit "SC-110".

(Exhibit "SC-110", Transcript of proceedings of Annual Meeting of Class B. stockholders of Iowa-Wisconsin Bridge Company, July 8, 1939, marked for the respondent.)

Mr. Morford: After being identified and proven by Mr. Thompson, we also propose to offer in evidence a transcript of Mr. Thompson's statements at a stockholders' meeting of Iowa-Wisconsin Bridge Company, held on December 6, 1938, and taken by Mr. Grant, shorthand reporter, a document which I will now ask the reporter to mark as Exhibit "SC-111".

(Exhibit "SC-111", Transcript of proceedings of stockholders' meeting of Iowa-Wisconsin Bridge Company, December 6, 1938, marked for the respondent.)

Mr. Morford: We also offer Mr. Thompson's testimony in the following details:

Mr. Thompson will deny that he had an office with Shaffer and his concerns in the Phoenix Building in Minneapolis, Minnesota, as referred to in Your Honor's opinion, record page 168.

Mr. Thompson will testify that the Phoenix Building [fol. 377] in Minneapolis has no connection with Phoenix Finance Corporation or System, and that the name is a mere coincidence.

Mr. Thompson will also testify that he was not "sole owner of Thompson & Company" as your Honor stated in your opinion, record page 168.

Mr. Thompson will deny that any negotiations between Shaffer and Thompson resulted in an agreement that Thompson should have complete control of the Bridge Company, as Your Honor said in the opinion, record page 168, and Mr. Thompson will deny that there ever existed any such agreement.

Mr. Thompson will deny that at the stockholders' meeting of the Bridge Company of December 22, 1931, the "Thompson forces controlled 2273 shares, mostly by proxy," as Your Honor held in the opinion, record page 175.

Mr. Thompson will deny that Oscar R. Thorson was "an employee of the Thompson concerns," as Your Honor held in the opinion, record page 175. In that respect Mr. Thompson will show that he first met Mr. Thorson about November of 1930, and that Thorson was at no time ever connected with any of these corporations that are involved in this case.

Mr. Thompson will also testify with respect to the facts concerning the succession in interest of Phoenix Finance Corporation to Phoenix Finance System pursuant to a contract of January 11, 1932, effective January 1, 1932, [fol. 378] and will refer to the minutes of the two corpo-



rations in connection with that point. Mr. Thompson will deny in such testimony the facts as stated by Your Honor in your opinion, record page 176, that Phoenix Finance System was liquidated. He will deny that Phoenix Finance Corporation was officered by the same officers as Phoenix Finance System. He will deny that the old corporation transferred all of its assets to the new corporation, or that it was created by and officered by the same individuals. Mr. Thompson will also deny that he, Phoenix Finance System, Thompson & Company, or any affiliated corporation had at any time any connection with Standard Shares Holding Company. He will further deny that the books of the Bridge Company were kept under the supervision of Phoenix Finance Corporation, or any predecessor or affiliated company. He will further deny that the books of the Bridge Company at the termination of his presidency were in any respect false.

We also offer the testimony of John A. Thompson for the purpose of proving that there was no agreement between John W. Shaffer & Company and Phoenix Finance System, or any one of the so-called Phoenix group, wherein Phoenix Finance Corporation assumed and agreed to pay McClintic-Marshall and Industrial Contracting Company items of \$21,262.71 in consideration for 100 shares of bridge stock delivered by Shaffer to Thompson. In other [fol. 379] words Mr. Thompson will demonstrate we believe very clearly that no such thing ever occurred.

Mr. Thompson is also offered as a witness to prove as a fact that Phoenix Finance System paid \$10,000 to the Bridge Company under date of September 24, 1931, and turned over to the Bridge Company Liberty Bonds at the cost to Phoenix Finance System of \$11,262.71 under date of December 24, 1931, for the purpose of paying—

The first date when I said \$10,000?

The Reporter: December 24, 1931.

Mr. Morford: That should be September 24, 1931.

(Correction was accordingly made in the record)

Mr. Morford: We offer Mr. Thompson's testimony to show that under the contract between the Bridge Com-

pany and Shaffer & Company the Bridge Company was obligated to pay Shaffer & Company for all extras, plus fifteen per cent; that these two sums of money, or most of those two sums of money, was due to Shaffer & Company for extras which totaled \$38,500; that all of the \$11,262.71 was used for that purpose; over \$9000 of the \$10,000 item was used for that purpose, the balance being for the purpose of paying the general expenses of the Bridge Company. In that last connection I don't want to take too much time as to the details, but I did want to show Your Honor our general purpose, and I note that Mr. Thompson's testimony would be that all of the \$10,000 item was used by [fol. 380] the Bridge Company for paying an extra, and that \$9000 out of the \$11,262.71 item was used for the purpose of paying an extra, the difference being used for the general purposes of the Bridge Company. And Mr. Thompson's testimony as so offered would also be to the effect that these sums of money were advanced after the bond issue had been authorized and upon the strength of the authorization of the bonds by the Bridge Company that Phoenix was induced to advance the last mentioned sum of money.

Although I have gone into some detail, Your Honor, I think I have covered all of the points upon which we desire to offer evidence through the medium of Mr. Thompson, who is available as a witness in this case, and whom we desire to have sworn and to so testify.

The Court: That is your formal offer?

Mr. Morford: That is our formal offer of evidence, sir.

Mr. Ontjes: The offer, Your Honor, it occurs to me that his reciting here what he proposed to prove by Mr. Thompson would be merely—

The Court: We will not take argument on it. Interpose your objection.

Mr. Ontjes: I object to it as being incompetent, irrelevant and immaterial, that the witness that is proposed to be offered is not competent, contravening the record in [fol. 381] this cause.

The Court: The objection will be sustained, and the offer of proof on the part of the respondent Phoenix Finance Corporation denied.

Mr. Morford: In that connection we also offer in evidence letter marked Exhibit "SC-106", the same being a letter from Rex Fowler to Mr. J. W. Kindig, dated July 25, 1935.

Mr. Ontjes: That is objected to as being incompetent, irrelevant and immaterial, not part of the record in this case, and cannot be added now as part of the record.

The Court: Objection sustained.

Mr. Morford: We offer in evidence the minutes of the Board of Directors meeting of Iowa-Wisconsin Bridge Company under the following dates;

March 11, 1931; November 10, 1931; December 22, 1931; March 7, 1932;

And minutes of Stockholders meetings of Iowa-Wisconsin Bridge Company of the following dates:

March 10, 1931; December 22, 1932.

Mr. Ontjes: We object to those as immaterial as new offers to be made at this time, and I might say that those minutes are already in the record before the Court.

The Court: Objection will be sustained as an offer of evidence on the part of the respondent in this proceeding.

[fol. 382] Mr. Morford: We offer in evidence letter from Iowa-Wisconsin Bridge Company to Phoenix Finance System, Inc., dated March 15, 1932, a copy of which is marked Exhibit "SC-107", and I hand for the purpose of making the offer both the copy and the original to Mr. Ontjes.

Mr. Ontjes: That is objected to as being incompetent, irrelevant and immaterial, it is an attempted offer of a letter, it is evidence at this time new, that is no part of the record in the former trial of this case.

The Court: It will be sustained.

Mr. Morford: We offer in evidence letter of Phoenix Finance System, Inc., to Iowa-Wisconsin Bridge Company,

dated March 15, 1932, copy of which is marked Exhibit "SC-108".

Mr. Ontjes: That is objected to as incompetent, irrelevant and immaterial, no bearing on the issues here now tendered, was not any part of the record in this cause.

The Court: It will be sustained.

Mr. Morford: We offer in evidence letter of Iowa-Wisconsin Bridge Company to Standard Shares Holding Company, dated March 11, 1931, with the acceptance of Standard Shares Holding Company indicated at the bottom thereof, and the resolution of the Board of Directors of Standard Shares Holding Company attached thereto, the exhibit being marked "SC-109".

Mr. Ontjes: We object to it as being incompetent, irrelevant [fol. 383] and immaterial, no part of the record in this cause, and cannot stand as new independent evidence outside of the record.

The Court: It will be sustained.

Mr. Morford: May it be understood that as I am now offering these records I am offering them in connection with what Mr. Thompson's testimony would be, and it would require Mr. Thompson's testimony to identify them? That is understood, isn't it?

Mr. Morford: I offer in evidence the transcript of Vernon L. Grant of the statements made by Mr. Thompson at the Stockholders' meeting of July 8, 1939, the particular document being marked Exhibit "SC-110". I might state, Your Honor, that I offer this document without any of the pencil notations or comments that may appear thereon, but merely as to the typewritten record and we would substitute a clean copy without the pencil notations in lieu of the original if it is admitted.

Mr. Ontjes: Your document is objected to as being incompetent, irrelevant and immaterial; also it contains a lot of interlineations and markings and corrections and changes; whether they were made before or after the reporter made the transcript there is no way of telling.

Mr. Morford: Those are not offered.

Mr. Ontjes: And if you take your statement that you [fol. 384] claim Thompson made as responsive to what is alleged in the bill it would be different, and I think this is just a wholesale offer and not responsive.

The Court: Objection sustained.

Mr. Morford: I offer the transcript of Mr. Grant of the statements of John A. Thompson made at the stockholders' meeting of December 6, 1938; the document is marked Exhibit "SC-111".

Mr. Ontjes: That is objected to for the reason it is incompetent, irrelevant and immaterial. If he wants to point out any particular statement that he claims is responsive to what is alleged in the bill of complaint would be one thing, but this whole document would certainly be immaterial.

The Court: It will be sustained.

(Exhibit "SC-112", Photostat copy of check (front and back) dated 3-11-31, Phoenix Finance System, Inc., to Iowa-Wisconsin Bridge Co., \$35,000;

(Exhibit "SC-113", Photostat copy of check (front and back) dated 3-11-31, Phoenix Finance System, Inc., to Iowa-Wisconsin Bridge Co., \$15,000;

marked for the respondent.)

Mr. Morford: I offer in evidence documents marked by the reporter Exhibits "SC-112 and "SC-113", the same being photostat copies of the face and reverse sides of [fol. 385] two checks, "SC-112", being the check of Phoenix Finance System to Iowa-Wisconsin Bridge Company in the sum of \$35,000, dated March 11, 1931; "SC-113" being the check of Phoenix Finance System, Inc., to Iowa-Wisconsin Bridge Company in the sum of \$15,000, dated March 11, 1931.

In connection with my offer of these checks I will state that the originals are in the custody of the Clerk in this cause in some manner of which I am not informed, but the checks themselves have never been physically offered in evidence by any party.

Mr. Ontjes: Objected to as incompetent, irrelevant and immaterial, repetition of the record previously made.

The Court: It will be sustained.

Mr. Morford: I desire now to renew the motion I made at an earlier stage of this proceeding to strike and delete from the record in this cause the deposition of John A. Thompson taken at Des Moines, Iowa, on the ground that that deposition has never been offered in evidence in this case or read into the evidence in this case, either in whole or in part, and is therefore not a proper part of the record.

Further on the ground that John A. Thompson was present personally as a witness, testified on behalf [on] the interveners, and that his deposition could not therefore be used in the cause.

I think I have already stated to Your Honor that Your [fol. 386] Honor's order merely permitted it to be printed for a very limited purpose, and you did not permit it to be used as a part of the record generally.

Mr. Ontjes: That is exactly the same thing that Your Honor ruled on this afternoon, it is a mere repetition of what he said then, and I don't think anything would be gained by—

The Court: The request will be denied.

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RE: ALBERT PENN.

Mr. Morford: Mr. Albert Penn, a witness on behalf of Phoenix Finance Corporation is present in court. I desire to have him sworn and to offer his evidence on behalf of Phoenix Finance Corporation in this case. Mr. Penn is the president of Phoenix Finance Corporation at the present time, and his evidence is offered to the same effect and with the same detail as shown by the schedule of the testimony of Albert Penn attached to the resistance of Phoenix Finance Corporation filed in this cause. Mr. Penn, if called as a witness on behalf of Phoenix Finance Corporation will testify to each and every fact stated in that schedule, and we hereby make tender of such testimony through Mr. Penn.



Mr. Ontjes: That is objected to as being incompetent, irrelevant and immaterial, and the witness is not competent to contravene the record.

The Court: The objection will be sustained and the offer [fol. 387] denied.

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RE: EMOBY H. ENGLISH.

Mr. Morford: Mr. Emory H. English, a witness on behalf of Phoenix Finance Corporation is offered to testify with respect to the compliance by Phoenix Finance Corporation with the order of this court made in this cause requiring Phoenix Finance Corporation to produce books and records pertaining to its business affairs with the Iowa-Wisconsin Bridge Company at its office in Des Moines, Iowa. Mr. English at the present time is not connected in any way with Phoenix Finance Corporation and his testimony as offered is confined solely to the one point I have just mentioned. I desire to have Mr. English sworn as a witness and to so testify.

Mr. Ontjes: Which is objected to as being incompetent, irrelevant and immaterial, and Mr. English is not competent to contravene the record of the previous trial of this cause; his testimony was in the record; he was examined and cross-examined, and any statements by him would not be a mere attempt to vary the record.

The Court: The objection will be sustained and the offer will be denied.

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RE: LEE J. SKONER.

Mr. Morford: Mr. Lee J. Skoner, a witness on behalf of Phoenix Finance Corporation is present in court. I [fol. 388] desire to have him sworn as a witness. Mr. Skoner if called will testify exactly in accordance with the facts stated in the schedule of the testimony of Lee J. Skoner attached to the resistance of Phoenix Finance Corporation in this cause. Mr. Skoner's testimony is offered with respect to that schedule and each and every detail thereof.

Mr. Skoner in his testimony will also identify and prove a report of an examination of the affairs of Iowa-Wisconsin Bridge Company, including cash receipts and disbursements of Iowa-Wisconsin Bridge Company commencing November 1, 1930, and ending with the close of business September 25, 1933, said report being certified by Ernst & Ernst, certified public accountants, under date of January 17, 1940. Mr. Skoner is an accountant in the employ of Ernst & Ernst, and the preparation of this report was under his immediate charge. With the identification of Mr. Skoner we will offer in evidence the report of Ernst & Ernst, which I am asking the reporter to mark as Exhibit "SC-114".

(Exhibit "SC-114", Receipts and Disbursements, Iowa-Wisconsin Bridge Company, November 1, 1930 to September 25, 1933, marked for the respondent.)

Mr. Morford: I might state in addition that this exact exhibit is attached as an exhibit to the resistance of Phoenix Finance Corporation filed in this cause. Perhaps I am incorrect in saying it is attached as an exhibit; it is [fol. 389] referred to as an exhibit, and is filed with the resistance of Phoenix Finance Corporation. I make tender of Mr. Skoner's testimony, and I offer in evidence Exhibit "SC-114".

Mr. Ontjes: We object to the offer of the testimony of Mr. Skoner as being incompetent, irrelevant and immaterial. Mr. Skoner is not competent to vary or contradict the record in this cause, nor to contravene it in any way. Further Mr. Skoner or the Phoenix Finance Corporation in the petition for rehearing presented an affidavit claiming to be by the same Mr. Skoner with respect to some of these matters, and passed on by the Court.

The Court: Objection sustained and the offer is denied in its entirety.

Mr. Morford: Defense rests.

The Court: Is that all?

Mr. Ontjes: That is all, Your Honor.

The Court: Testimony closed. Do you want a transcript of this matter?

Mr. Morford: Yes, Your Honor, we would like a transcript made and filed.

The Court: Now, do you want this case to stand submitted at this point?

Mr. Ontjes: Yes, I think so.

Mr. Morford: We are content that it stand submitted, sir.

[fol. 390] The Court: Very well. Cause submitted.

Mr. Ontjes: Yes.

[fol. 391]                      Reporter's Certificate.

I, R. C. Turner, a Certified Shorthand Reporter, residing in Sioux City, in the Northern District of Iowa, and the duly appointed, qualified and acting shorthand reporter in the above entitled cause:

Hereby Certify, That on the 11th day of March A. D. 1940, at the Federal Building in Sioux City, in the Northern District of Iowa, before Hon. Geo. C. Scott, District Judge, I took down in shorthand, correctly, all proceedings had on the trial of the above entitled cause on the issues joined on the supplemental and ancillary bill of complaint of the Iowa-Wisconsin Bridge Company, a corporation, and the answer of the respondent, Phoenix Finance Corporation, and have transcribed the same; that the above and foregoing is a true and correct translation of my shorthand notes so taken, and transcript of all proceedings [fol. 392] had on the trial of said cause at the time and place hereinabove mentioned.

Witness my hand at Sioux City, in the Northern District of Iowa, this 15th day of March A. D. 1940.

R. C. TURNER,  
Certified Shorthand Reporter.

Filed in the District Court March 20, 1940.

[fol. 393]

(Exhibit S. C. 1.)

## Sum Case.

New Castle County,—ss.

The State of Delaware,

To the Sheriff of New Castle County,—Greeting:

Seal

We Command You, That you summon Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware late of your County company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Seventh day of November, next to answer Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the Nineteenth day of September, in the year of our  
Lord one thousand nine hundred and thirty-eight.

Issued Sept. 29, 1938.

MARTIN G. HANNIGAN,  
Prothonotary.

[fol. 394] Summoned Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware by serving personally and delivering a copy of the within writ to Charles Peabbles, Assistant Secretary of Corporation Trust Company resident agent of said Iowa-Wisconsin Bridge Company, a corporation as aforesaid September 30, 1938.

So Ans.

JOHN M. ULMER,  
Sheriff.

costs	\$ .75
mlg	.10
	<hr/>
	\$ .85

No. 39      Nov. Term, A. D. 1938.

Phoenix Finance Corporation a corporation duly organized  
and existing under the laws of the State of Delaware,  
vs.

Iowa-Wisconsin Bridge Company a corporation duly or-  
ganized and existing under the laws of the State of  
Delaware.

Sum Case

MM&L, Esqs.

Pro.q

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[fol. 395] In the Superior Court of the State of Delaware  
In and For New Castle County.

Summons Case.

November Term, A. D. 1938.

Phoenix Finance Corporation, a corporation duly organ-  
ized and existing under the laws of the State of  
Delaware,

No. 39.      vs.

Iowa-Wisconsin Bridge Company, a corporation duly  
organised and existing under the laws of the State  
of Delaware.

New Castle County:—ss.:

Iowa-Wisconsin Bridge Company, a corporation of the  
State of Delaware, the defendant in this suit, was sum-  
moned to answer Phoenix Finance Corporation, a corpora-  
tion of the state of Delaware, the plaintiff in this suit, of  
a plea of trespass on the case upon promises, and thereupon  
the said plaintiff, by Marvel, Morford & Logan, its attor-  
neys, complains:

For That Whereas, the said defendant, heretofore, to-  
wit, on the 15th day of December, A. D. 1932, at Des Moines,  
in the County of Polk, State of Iowa, to-wit, at New Castle  
County aforesaid, made its certain promissory note in writ-  
ing, bearing date the day and year aforesaid, and thereby  
then and there promised to pay on the 15th day of June, A.  
D. 1933, to the said plaintiff, or order, the sum of Two  
Thousand Dollars (\$2,000.00) for value received, and then

and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

[fol. 396] And Whereas, Also, the said defendant, heretofore, to-wit, on the 15th day of December, A. D., 1932, at Des Moines, in the County of Polk, State of Iowa, that is to say at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay at 316 12th Street, Ses Moines, Iowa, on the 15th day of June, A. D. 1933, to the said plaintiff, or order, the sum of Two Thousand Dollars (\$2,000.00) for value received, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

And Whereas Also, the said defendant, heretofore, to-wit, on the 20th day of January, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, to-wit at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay, on the 20th day of July, A. D. 1933, to the said plaintiff, or order, the sum of Three Thousand One Hundred and Twenty-five Dollars (\$3,125.00) for value received, and then and there delivered the



said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at New Castle County [fol. 397] ty aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of moeny in the said promissory note specified. according to the tenor and effect thereof.

And Whereas Also, the said defendant, afterwards, to-wit, on the 15th day of June, A. D. 1938, at Des Moines, in the County of Polk, State of Iowa, that is to say at New Castle County aforesaid, was indebted to the said plaintiff in the sum of Five Thousand One Hundred and Twenty-five Dollars (\$5,125.00), for so much money by the said plaintiff before that time lent and advanced to the said defendant at its like instance and request.

And Whereas Also, the said defendant afterwards, to-wit, on the 20th day of January, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, that is to say, at New Castle County aforesaid, was indebted to the said plaintiff in the further sum of Two Thousand Five Hundred Dollars (\$2,500.00) for so much money before that time and then due and payable from the defendant to the said plaintiff for interest upon and for the forbearance of divers large sums of money before then lent and advanced by the said plaintiff to the said defendant at its special instance and request, and by it the said plaintiff forborne to the said defendant for divers long spaces of time, before then elapsed, at the like special instance and request of the said defendant, and also for other money, before that time and then due and payable from the said defendant to the said plaintiff for interest upon and for the forbearance of divers other large sums of money before then due and owing from the said defendant to the said plaintiff, and by it, the said plaintiff, forborne to the said defendant for divers large spaces of time before then elapsed, at the like special instance and request of the said defendant.

And, being so indebted, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at Des Moines, in the County of Polk, State of Iowa, that is to say at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff [fol. 398] tiff to pay it the said aforementioned sums of money when it, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant, not regarding its said several promises and undertakings in this behalf, did not pay to the said plaintiff the several sums of money above mentioned or any of them or any part thereof, although often requested so to do; but the said defendant hath hereunto neglected and refused and still doth neglect and refuse to pay the same to the said plaintiff, to the damage of the said plaintiff of the sum of Ten Thousand Dollars (\$10,000.00), and therefore it brings its suit, &c.

MARVEL, MORFORD & LOGAN,  
Attorneys for Plaintiff.

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Copy of Instruments Sued Upon.

\$3,125.00

Des Moines, Iowa, Jan. 20, 1933.

On the 20 day of July, 1933, for value received, We promise to pay to the order of Phoenix Finance Corporation the sum of Thirty-one hundred twenty-five and no/100 Dollars Payable at 316 12th Street, Des Moines, Iowa. with interest at 8 per cent per annum from date. Interest payable semi-annually.

Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00, and . . . . do hereby severally waive demand of payment, protest, and notice of protest of this note and consent that time of payment may be extended

without notice. A failure to pay interest when due, shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,  
By Oscar R. Thorson,  
Secretary-Treasurer.

P. O. Address .....

No. ....

[fol. 399] \$2,000.00 Des Moines, Iowa, December 15, 1932.

On the 15 day of June, 1933, for value received, We promise to pay to the order of Phoenix Finance Corporation the sum of Two Thousand and No/100 Dollars, Payable at 316 12th street, Des Moines, Iowa, with interest at 8 per cent. per annum from date. Interest payable semi-annually. Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction of this note to the amount of \$300.00, and we do hereby severally waive demand of payment, protest, and notice of protest of this note, and consent that time of payment may be extended without notice. A failure to pay interest when due, shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,  
By Oscar R. Thorson,  
Secretary-Treasurer.

P. O. Address .....

No. ....

[fol. 400] Bill of Particulars.

For money lent and advanced to Iowa-Wisconsin  
Bridge Company by Phoenix Finance Cor-  
poration, to-wit, on or about the 15th day  
of December, A. D. 1932 ..... \$2,000.00

For interest due and owing upon the above sum of money by Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation from the 15th day of December, A. D. 1932, to date .....	1,000.00
For money lent and advanced to Iowa-Wisconsin Bridge Company by Phoenix Finance Corporation, to-wit, on or about the 20th day of January, A. D. 1933 .....	3,125.00
For interest due and owing upon the above sum of money by Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation from the 20th day of January, A. D. 1933, to date .....	1,500.00

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[fol. 401] State of Delaware,  
New Castle County.—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing pages contain a true copy of the writ, Sheriff's return & Narr in the case there stated as the same now remains in the Superior Court of the said State, at Wilmington.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Fifth day of February, A. D., One thousand nine hundred and forty.

(Seal)

MARTIN G. HANNIGAN,  
Prothonotary.

State of Delaware, to-wit:—

I, Daniel J. Layton, Chief Justice of the State of Delaware, and as such, the Presiding Judge of the Superior Court of the said State, do hereby certify that the foregoing Record and attestation, made by Martin G. Hannigan, Esq., Prothonotary of the said Court, within the County of New Castle, whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form, and made by the proper officer.

In testimony whereof, I hereunto set my hand, this Fifth day of February, A. D., One thousand nine hundred and forty.

DANIEL J. LAYTON,  
Chief Justice.

[fol. 402] State of Delaware,  
New Castle County,—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for the County of New Castle, do certify that the Honorable Daniel J. Layton, Esquire, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof, and still is, Chief Justice of the State of Delaware, and, as such, the Presiding Judge of the Superior Court of the said State, duly commissioned and sworn, to all whose acts, as such, full faith and credit are, and ought to be, given, as well in Courts of Justice as elsewhere.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Fifth day of February, A. D., One thousand nine hundred and forty.

MARTIN G. HANNIGAN,  
(Seal) Prothonotary.

Filed in the District Court March 20, 1940.

[fol. 403] (Exhibit SC-2.)

In the Court of Chancery of the State of Delaware in and for New Castle County.

### Bill of Complaint.

Phoenix Finance Corporation, a corporation of the State of Delaware, Complainant,

vs.

Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, Respondent.

To the Chancellor of the State of Delaware

Humbly complaining, sheweth unto your Honor, your Orator, Phoenix Finance Corporation, as follows:

1. That your Orator, Phoenix Finance Corporation, is a corporation duly organized and existing under the laws

of the State of Delaware, having been incorporated on the 29th day of December, 1931, and having its principal place of business within the State of Delaware at 900 Market Street, City of Wilmington, State of Delaware.

2. That the respondent, Iowa-Wisconsin Bridge Company is a corporation duly organized and existing under the laws of the State of Delaware, having been organized at Lansing Bridge Company on the 20th day of March, A. D. 1928, and thereafter, on the 11th day of June, A. D. 1928, having changed its name to Iowa-Wisconsin Bridge Company by an amendment to its certificate of incorporation. Said corporation has its principal place of business within the State of Delaware at 100 West Tenth Street, Wilmington, Delaware.

3. That said respondent has an authorized capital stock consisting of 3,750 Class B shares without par value. Said Class A shares are without voting rights, except as expressly conferred by statute, while said Class B shares have the sole right to elect directors for said corporation. At the present time 3632 shares of the Class A stock and 3637 shares of the Class B stock are issued and outstanding and are held by numerous stockholders. The respondent holds as treasury stock 38 shares of the Class A and 90 shares of the Class B stock.

[fol. 404] 4. That on or about the 1st day of November A. D. 1931 the respondent issued a certificate for 517 shares of its Class A stock, which certificate was numbered N1220, dated November 1, 1931, and was issued in the name of Phoenix Finance System, Inc. Said 517 shares, when issued as aforesaid to Phoenix Finance System, Inc., were fully paid for and non-assessable, and said Phoenix Finance System, Inc., became the holder of record of said number of shares represented by said certificate. Phoenix Finance System, Inc., as of January 1, 1932, sold, transferred and assigned for a valuable consideration said 517 shares and the certificate representing the same unto your Orator, Phoenix Finance Corporation, and as of March 15, 1932, your Orator, Phoenix Finance Corporation, was the owner of 517 shares of the Class A stock of the respondent and held certificate #N1220 above mentioned which had been transferred and endorsed to it as evidence of its ownership of said stock.



5. That on the 15th day of March, A. D. 1932, your Orator transferred and assigned said 517 shares and said certificate N1220 to the respondent, Iowa-Wisconsin Bridge Company, in exchange for the issuance and delivery unto it by said respondent of \$60,390.14 in principal amount of respondent's First Mortgage Gold Bonds, 6%, dated February 1, 1932, issued under a Deed of Trust dated January 1, 1932, between Iowa-Wisconsin Bridge Company and Bechtel Trust Company, as Trustee. Said bonds were issued in the form of bearer bonds. At said time your Orator also gave Iowa-Wisconsin Bridge Company a credit of \$109.86 so that a total of \$60,500 in principal amount of said bonds could be issued unto it.

6. The form of said exchange was that of a purchase from your Orator by said Iowa-Wisconsin Bridge Company of said 517 shares of its Class A stock and the consideration for said purchase was the issuance and delivery unto your Orator of the bonds of Iowa-Wisconsin Bridge Company as aforesaid.

[fol. 405] 7. That on the 15th day of March, A. D. 1932, when said purported purchase and sale took place as aforesaid, whereby your Orator sought to sell and the respondent sought to purchase 517 shares of the Class B stock of the respondent from your Orator in consideration of the issuance of said bonds of the respondent, there was an impairment of the capital of said respondent and by virtue of said attempted purchase and sale the capital of the respondent was further impaired.

8. Your Orator has been advised and informed and believes and therefore avers that under and pursuant to the provisions of Section 19 of the Delaware Corporation Law the sale by it as aforesaid of said 517 shares of the Class A stock of respondent to the respondent in consideration of the issuance and delivery by the respondent to your Orator of said bonds as aforesaid, was invalid and void. Your Orator further says that said respondent, Iowa-Wisconsin Bridge Company, has refused to recognize said purchase and sale as having been a valid transaction and has refused to recognize that said bonds held by your Orator are valid and enforceable obligations of said respondent.

9. The respondent made two semi-annual payments of interest upon said bonds, namely, on August 1, 1932, and on February 1, 1933, but has made no further or other payments of interest to your Orator and has refused to pay to your Orator the principal amount with interest now due and payable upon said bonds. The sums received by your Orator for said two semi-annual interest payments came from funds which your Orator advanced unto the respondent and which have not been repaid unto your Orator.

10. Your Orator says that by virtue of said attempted purchase and sale having been invalid and void, it has at all times continued as a stockholder owning said 517 shares of the Class A stock of the respondent. After your Orator transferred and delivered said certificate #N1220 to the respondent the respondent caused the same to be cancelled and issued in place thereof certificate N1239 dated March [fol. 406] 15, 1932, for said 517 shares of the Class A stock and issued the same in the name of the respondent, and thereafter retained the same and still holds the same as treasury stock.

11. Your Orator has made a demand upon the respondent for the delivery unto your Orator of a certificate for said 517 shares, but the respondent has refused to deliver a certificate for said number of shares unto your Orator or to register your Orator on its books as the owner of said 517 shares.

12. Your Orator hereby offers to bring into Court and surrender for delivery to the respondent \$60,390.14 in principal amount of respondent's First Mortgage Gold Bonds, 6%, dated February 1, 1932, issued by Iowa-Wisconsin Bridge Company as aforesaid, upon said respondent registering it as the holder of said 517 shares upon the books of respondent and issuing unto it a certificate for said 517 shares.

Wherefore, your Orator prays as follows:

(1) That a subpoena may issue directed to said respondent requiring it to appear and answer this bill of complaint.

(2) That a decree be entered herein directing the respondent to register your Orator, Phoenix Finance Corpo-

ration, upon its books and records as the owner of the 517 shares of the Class A stock of the respondent above mentioned and to issue and deliver unto your Orator a certificate for said shares.

(3) That your Orator may have such further and other relief as the nature of the case may require and to your Honor may seem equitable and proper.

**PHOENIX FINANCE  
CORPORATION,**

By Dee E. Renshaw,  
Vice-President.

Attest:

DEE E. RENSHAW,  
Vice-Pres.

Arthur G. Logan,  
Marvel, Morford & Logan,  
Solicitors for Complainant.

[fo'. 407] State of Florida,  
County of St. Lucie—ss.:

Be It Remembered that on this 30th day of September A. D. 1938, personally appeared before me, the subscriber, a Notary Public for the State and County aforesaid, Dee E. Renshaw, who being by me first duly sworn according to law, did depose and say:

That he is Vice-President of Phoenix Finance Corporation, the complainant named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof; that what is set forth in said bill of complaint, so far as the same relates to his own act and deed, or to the act and deed of said complainant, is true, and so far as the same relates to the act and deed of any other person or persons he believes the same to be true; that he has executed the foregoing bill of complaint on behalf of the corporation pursuant to authority of the Board of Directors.

DEE. E. RENSHAW.

Sworn to and subscribed before me the day and year aforesaid.

E. S. WILLES,  
Notary Public.  
(Notary Public, State of Florida  
at Laige.  
My commission expires Jan. 15,  
1939)

Filed Feb. 18, 1939.

[fol. 408] State of Delaware,  
New Castle County—ss.

I, Anthony F. Emory, Register of the Court of Chancery of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing is a true and correct copy of the Bill of Complaint, filed February 18, A. D. 1939, in the cause of Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company, as the same remains on file and of record in said Court.

In Testimony Whereof, I have hereunto, set my hand and affixed the seal of said Court, at Wilmington, this Fifth day of February in the year of our Lord, nineteen hundred and forty.

(Seal) ANTHONY F. EMORY,  
Register in Chancery.

State of Delaware, to-wit:

I, William Watson Harrington, Chancellor of the State of Delaware, do hereby certify that the foregoing Record and Attestation, made by Anthony F. Emory, Esquire, Register in Chancery within the County of New Castle, whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form of law, and made by the proper officer.

In Testimony Whereof, I have hereunto set my hand, this Fifth day of February in the year of our Lord, nineteen hundred and Forty.

WM. WATSON HARRINGTON,  
Chancellor.

[fol. 409] State of Delaware,  
New Castle County—ss.

I, Anthony F. Emory, Register of the Court of Chancery of the State of Delaware, in and for New Castle County, do hereby certify that the Honorable William Watson Harrington, by whom the foregoing attestation was made and whose name is thereto subscribed, was at the time of the making thereof, and still is Chancellor of the State of Delaware, duly commissioned and sworn, to all whose acts, as such full faith and credit are and ought to be given, as well in Courts of Justice as elsewhere.

In Testimony Whereof, I have hereunto, set my hand and affixed the seal of the Court, at Wilmington, this Fifth day of February in the year of our Lord Nineteen hundred and forty.

ANTHONY F. EMORY,  
Register in Chancery.

(Seal)

Filed in the District Court March 20, 1940.

[fol. 410] (Exhibit S. C. 3)

### Sum Case

New Castle County—ss.:

The State of Delaware,

To the Sheriff of New Castle County,—Greeting:

Seal

We Command You, That you summon Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware late of your County company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Eighteenth day of September next to answer Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

Issued June 22, 1939.

MARTIN G. HANNIGAN,  
Prothonotary.

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[fol. 411] Summoned Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, by serving a copy of the within writ upon Charles S. Peabbleo, Assistant Secretary of the Corporation Trust Company, said Corporation Trust Company being Resident Agent in the State of Delaware for the said Iowa-Wisconsin Bridge Company, a corporation as aforesaid, on the twenty-third day of June A. D. 1939. The President or other head officers of the said Iowa-Wisconsin Bridge Company, a corporation as aforesaid, not being found within the State of Delaware.

So Answers,

SAMUEL M. FORD,  
Sheriff.

Cost	.75
Mlg.	.10
	<hr/>
	.85

Sept. Term, A. D. 1939.

Phoenix Finance Corporation a corporation duly organized  
and existing under the laws of the State of Delaware,

No. 65 vs.

Iowa-Wisconsin Bridge Company a corporation duly or-  
ganized and existing under the laws of the State of  
Delaware.

(copy)

Sum Case

MM&L, Esqs.

Pro.q

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[fol. 412]

## Exhibit 3-a

In the Superior Court of the State of Delaware in and for  
New Castle County

## Summons Case

September Term 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 65 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

State of Florida,

County of Pinellas—ss.:

Before Me, Josie Lee Bates, a Notary Public for the State of Florida and the County aforesaid, personally comes M. K. Thompson, Treasurer of Phoenix Finance Corporation, the plaintiff above named, who being by me duly sworn according to law, deposes and says:

That she is Treasurer of Phoenix Finance Corporation, the said plaintiff; that annexed hereto are true and correct copies of the promissory notes sued upon in this action; that the sum demanded of the said defendant is the sum of Twelve Thousand Six Hundred Ten Dollars and Nineteen Cents (\$12,610.19) with interest at the rate of 8% per annum on the sum of Twelve Thousand One Hundred Ten Dollars and Nineteen Cents (\$12,110.19) from the 7th day of July, 1933, and interest at the rate of 8% per annum on the sum of Five Hundred Dollars (\$500.00) from the 31st day of December, 1932, said interest rates of 8% being the lawful rate of interest in the State of Iowa at the time of the making and delivery of said promissory notes, and the said deponent further says that she verily believes that the said sum of Twelve Thousand Six Hundred Ten Dollars and Nineteen Cents (\$12,610.19) with interest as aforesaid is justly and truly due from the said defendant to the said plaintiff.

M. K. THOMPSON.

Corporate seal

Sworn to and subscribed before me this 30th day of June  
A. D. 1939.

JOSIE LEE BATES,  
Notary Public.

(Seal)

[fol. 413]

\$500.00

Des Moines, Iowa December 31, 1932.

On the 31 day of June 1933 for value received we promise to pay to the order of Phoenix Finance Corporation the sum of Five Hundred and No/100 dollars payable at 316 12th Street, Des-Moines, Iowa with interest at 8 per cent per annum from date. Interest payable semi-annually.

Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00 and we do hereby severally waive demand of payment, protest, and notice of protest of this note and consent that time of payment may be extended without notice. A failure to pay interest when due shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Oscar R. Thorson,

Secy-Treas.

P. O. Address.....

No. ....

[fol. 414]

Des Moines, Iowa  
July 7, 1933.

\$12,110.19

On Demand, for value received, the undersigned promises to pay to the order of the Phoenix Finance Corporation at its office in Des Moines, Iowa the sum of Twelve Thousand One Hundred Ten and 19/100 Dollars (\$12,110.19) with interest payable semi annually at the rate of Eight (8%) per cent per annum from date.

Default in the payment of any installment of interest hereof, shall at the option of the holder hereof and without

notice render the then unpaid balance of the principal hereof and accrued interest thereon, at once due and payable.

Extension of the time of payment of all or any part of the amount owing hereon at any time, or times, shall not affect the liability of said party hereto.

And, we, the undersigned, hereby transfer and deliver to the legal holder of the above note, as collateral security, for the payment of said note and of any other liabilities of the undersigned to the said payee or assigns, due or to become due, or that hereafter may be contracted, the following Class B bonds of the Iowa-Wisconsin Bridge Company described as Follows:

Bond Nos.	Denomination	Maturity date	Total
106 to 111 inc.	\$ 100 00	Feb. 1, 1947	\$ 600 00
119	500 00	Feb. 1, 1947	500 00
121 to 130 inc.	500 00	Feb. 1, 1949	5,000 00
131	5000 00	Feb. 1, 1950	5,000 00
132 to 139 inc.	500 00	Feb. 1, 1951	4,000 00
142	5000 00	Feb. 1, 1952	5,000 00
			<hr/> 20,100 00

The undersigned hereby gives the said payee or assigns, authority to sell the said bonds or any part thereof or any substitutes therefor, and all additions thereto, on the maturity of the above note, or any time thereafter, at any public or private sale, the option of the said payee or assigns, without publishing notice of the same, or giving notice, with the right to said payee or assigns themselves to be the purchasers. And after deducting all costs and expenses, including legal attorney's fees, to apply the residue of proceeds of sale to the payment of any, either or all liabilities as aforesaid, as said payee or assigns shall elect, returning the overplus to the undersigned; and in case the said proceeds shall not cover the principal, interest and said expenses, the undersigned promises to pay the deficiency immediately after such sale with interest on the unpaid balance of principal at 8% per annum.

Signed by authority of the Board of Directors of the Iowa-Wisconsin Bridge Company this 7th day of July 1933.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Emory H. English,

Vice-President.

By Oscar R. Thorson,

Secretary-Treasurer.

(Seal)

[fol. 415]

Exhibit 3

In the Superior Court of the State of Delaware in and for  
New Castle County

September Term, 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 65 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

New Castle County--ss.:

Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, the defendant in this suit, was summoned to answer Phoenix Finance Corporation, a corporation of the State of Delaware, the plaintiff in this suit, of a plea of trespass on the case upon promises, and thereupon the said plaintiff, by Marvel, Morford & Logan, its attorneys, complains:

For That Whereas, the said defendant, heretofore, to-wit, on the 31st day of December, A. D. 1932, at Des Moines, in the County of Polk, State of Iowa, to-wit, at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay on the 31st day of June A. D. 1933, to the order of the said plaintiff, for value received, the sum of Five Hundred Dollars (\$500.00), payable at 316 12th Street, Des Moines, Iowa, with interest at 8% per annum from the date thereof, payable semi-

annually, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in said promissory note specified, according to the tenor and effect of said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at New Castle County, aforesaid, undertook and then and there faithfully promised the said [fol. 416] plaintiff to pay it the said sum of money in said promissory note specified, according to the tenor and effect thereof.

And Whereas Also, the said defendant, heretofore, to-wit, on the 7th day of July, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, to-wit, at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay, on demand, for value received, to the order of the said plaintiff, at its office in Des Moines, Iowa, the sum of Twelve Thousand One Hundred Ten Dollars and Nineteen Cents (\$12,110.19), with interest, payable semi-annually, at the rate of 8% per annum from the date thereof. and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in said promissory note specified, according to the tenor and effect of said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in said promissory note specified, according to the tenor and effect thereof. And the said plaintiff in fact says that afterwards, to-wit, on or about the 1st day of October, A. D. 1933, to-wit, at the County aforesaid, payment of said sum of money in said promissory note specified was duly demanded by the plaintiff of the said defendant, according to the tenor and effect of said promissory note.

And Whereas Also, the said defendant, heretofore, to-wit, on the 7th day of July, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, to-wit, at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay, on demand, for value received, to the order of the said plaintiff, at its office in Des Moines, Iowa, the sum of Twelve Thousand One Hundred Ten Dollars and Nineteen Cents (\$12,110.19), with interest, payable semi-annually, at the rate of 8% per annum [fol. 417] from the date thereof, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in said promissory note specified, according to the tenor and effect of said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in said promissory note specified, according to the tenor and effect thereof.

And Whereas Also, the said defendant, afterwards, to-wit, on the 1st day of January, A. D. 1934, at Des Moines, in the County of Polk, State of Iowa, to-wit, at New Castle County aforesaid, was indebted to the said plaintiff in the sum of Fifteen Thousand Dollars (\$15,000.00), for so much money by the said plaintiff before that time lent and advanced to the said defendant at its like special instance and request.

And Also in the further sum of Fifteen Thousand Dollars (\$15,000.00), like lawful money, for so much money by the said plaintiff before that time paid, laid out and expended to and for the use of the said defendant at its like special instance and request.

And Also in the further sum of Fifteen Thousand Dollars (\$15,000.00), like lawful money, for so much money by the said defendant before that time had and received to and for the use of the said plaintiff.



And Whereas Also, the said defendant, afterwards, to-wit, on the day and year aforesaid, at the County aforesaid, accounted with the plaintiff of and concerning divers other sums of money from the said defendant to the said plaintiff before that time due and owing and then in arrears and unpaid, and on such accounting the said defendant was then and there found to be in arrear and indebted to the said plaintiff in the further sum of Fifteen Thousand [fol. 418] Dollars (\$15,000.00) of like lawful money.

And Whereas Also, the said defendant, afterwards, to-wit, on the 1st day of July, A. D. 1939, at Des Moines, in the County of Polk, State of Iowa, to-wit, at New Castle County aforesaid, was indebted to the said plaintiff in the further sum of Seven Thousand Dollars (\$7,000.00), like lawful money, for so much money before that time and then due and payable from the defendant to the said plaintiff for interest upon and for the forbearance of divers large sums of money before then lent and advanced by the said plaintiff to the said defendant at its special instance and request, and by it, the said plaintiff, forbore to the said defendant for divers long spaces of time before then elapsed, at the like special instance and request of the said defendant, and also for other money before that time and then due and payable from the said defendant to the said plaintiff for interest upon and for the forbearance of divers other large sums of money before then due and owing from the said defendant to the said plaintiff, and by it, the said plaintiff, forbore to the said defendant for divers large spaces of time before then elapsed, at the like special instance and request of the said defendant.

And Being So Indebted, it, the said defendant, in consideration thereof, afterwards, to-wit, on the several dates aforesaid, at Des Moines, in the County of Polk, State of Iowa, to-wit, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said aforementioned sums of money when it, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant, not regarding its said several promises and undertakings in this behalf, did not pay to the said plaintiff the several sums of money above mentioned, or any of them, or any part thereof, although

often requested so to do; but the said defendant hath hitherto neglected and refused and still doth neglect and refuse to pay the same to the said plaintiff, to the damage of the said plaintiff of the sum of Twenty-five Thousand Dollars (\$25,000.00), and therefore it brings its suit, &c.

MARVEL, MORFORD & LOGAN,  
Attorneys for Plaintiff.

[fol. 419] Copy of Instruments Sued Upon

\$\*\*500.00\*\* Des Moines, Iowa, December 31, 1932.

On the 31 day of June 1933, for value received we promise to pay to the order of Phoenix Finance Corporation the sum of

.....Five Hundred and No. 100.....Dollars

Payable at 316 12th Street, Des Moines, Iowa.

with interest at 8 per cent. per annum from date. Interest payable semi annually.

Upon default of payment of this note, the makers, endorsers, guarantors and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00, and we do hereby severally waive demand of payment, protest, and notice of protest of this note and consent that time of payment may be extended without notice. A failure to pay interest when due, shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Oscar R. Thorson,

Secy-Treas.

P. O. Address  
No.

[fol. 420]

Des Moines, Iowa.  
July 7, 1933.

\$12,110.19

On demand, for value received, the undersigned promises to pay to the order of the Phoenix Finance Corporation at

its office in Des Moines, Iowa the sum of Twelve Thousand One Hundred Ten and 19/100 Dollars (\$12,110.19) with interest payable semi annually at the rate of Eight (8%) per cent per annum from date.

Default in the payment of any installment of interest hereof, shall at the option of the holder hereof and without notice render the then unpaid balance of the principal hereof and accrued interest thereon, at once due and payable.

Extension of the time of payment of all or any part of the amount owing hereon at any time, or times, shall not affect the liability of said party hereto.

And we, the undersigned, hereby transfer and deliver to the legal holder of the above note, as collateral security, for the payment of said note and of any other liabilities of the undersigned to the said payee or assigns, due or to become due, or that hereafter may be contracted, the following Class B. bonds of the Iowa-Wisconsin Bridge Company describe as follows:

Bond No.	Denomination	Maturity Date	Total
106 to 111 inc.	\$ 100 00	Feb. 1, 1947	\$ 600 00
119	500 00	Feb. 1, 1947	500 00
121 to 130 inc.	500 00	Feb. 1, 1949	5,000 00
131	5000 00	Feb. 1, 1950	5,000 00
132 to 139 inc.	500 00	Feb. 1, 1951	4,000 00
142	5000 00	Feb. 1, 1952	5,000 00
			<hr/> 20,100 00

The undersigned hereby gives the said payee or assigns, authority to sell the said bonds or any part thereof or any substitutes therefor, and all additions thereto, on the maturity of the above note, or at any time thereafter, at any public or private sale, at the option of the said payee or assigns, without publishing notice of the same, or giving notice, with the right to said payee or assigns themselves to be the purchasers. And after deducting all costs and expenses, including legal attorney's fees, to apply the residue of proceeds of sale to the payment of any, either or all liabilities as aforesaid, as said payee or assigns shall elect, returning the overplus to the undersigned; and in case the said proceeds shall not cover the principal, inter-

# MICRO CARD

TRADE

MARK



22

41



630

65



est and said expenses, the undersigned promises to pay the deficiency immediately after such sale with interest on the unpaid balance of principal at 8% per annum.

Signed by authority of the Board of Directors of the Iowa-Wisconsin Bridge Company this 7th day of July, 1933.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Emory H. English,

Vice-President.

By Oscar R. Thorson,

Secretary-Treasurer.

(Corporate Seal.)

[fol. 421] Bill of Particulars.

For money lent and advanced to Iowa-Wisconsin Bridge Company by Phoenix Finance Corporation, to wit, on or about the 31st day of December, A. D. 1932 .....	\$ 500.00
For interest due and owing upon the above sum of money by Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation from the 31st day of December, A. D. 1932 to date	300.00
For money lent and advanced to Iowa-Wisconsin Bridge Company by Phoenix Finance Corporation, to wit, on or about the 7th day of July A. D. 1933, .....	12,110.19
For interest due and owing upon the above sum of money by Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation from the 7th day of July, A. D. 1933, to date....	6,700.00

[fol. 422] State of Delaware,  
New Castle County—ss.

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for new Castle County, do hereby certify that the foregoing pages contain a true copy of the Affidavit of Demand & Writ, together with the Narr filed in the case there stated as the same now remains in the Superior Court of the said State, at Wilmington.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Sixteenth day of February A. D. One thousand nine hundred and forty.

MARTIN G. HANNIGAN,

(Seal)

Prothonotary.

State of Delaware, to-wit:—

I, Daniel J. Layton, Chief Justice of the State of Delaware, and as such, the Presiding Judge of the Superior Court of the said State, do hereby certify that the foregoing Record and attestation, made by Martin G. Hannigan Esq., Prothonotary of the said Court, within the County of New Castle, whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form, and made by the proper officer.

In testimony whereof, I hereunto set my hand, this Sixteenth day of February A. D. One thousand nine hundred and forty.

DANIEL J. LAYTON,

Chief Justice.

[fol. 423] State of Delaware,  
New Castle County,—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for the County of New Castle, do certify that the Honorable Daniel J. Layton, Esquire, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof, and still is, Chief Justice of the State of Delaware, and, as such, the Presiding Judge of the Superior Court of the said State, duly commissioned and sworn, to all whose acts, as such, full faith and credit are, and ought to be, given, as well in Courts of Justice as elsewhere.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Sixteenth day of February, A. D., One thousand nine hundred and forty.

(Seal)

MARTIN G. HANNIGAN,

Prothonotary.

Filed in the District Court March 20, 1940.

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[fol. 424]

(Exhibit S. C. 4.)

## Sum Case.

New Castle County,—ss.:

The State of Delaware,

To the Sheriff of New Castle County,—Greeting:

Seal

We Command You, That you summon Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware late of your County company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Eighteenth day of September next to answer Phoenix Finance Corporation a corporation duly organized and existing under the laws of the State of Delaware of a plea that it hold and keep with it the covenant between them made according to the force and effect of certain articles of agreement between them and &c.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

Issued Jun. 22, 1939.

MARTIN G. HANNIGAN,  
Prothonotary.

---

[fol. 425] Summoned Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, by serving a copy of the within writ upon Charles S. Peabbleo, Assistant Secretary of Corporation Trust Company, said Corporation Trust Company being Resident Agent in the State of Delaware for the said Iowa-Wisconsin Bridge Company, a corporation as aforesaid, on the twenty-third day of June, A. D., 1939. The President or other head officers of the said Iowa-Wisconsin

Bridge Company, a corporation as aforesaid, not being found within the State of Delaware.

So Ans.

Cost .75

Mlg. .10

---

.85

SAMUEL M. FORD,  
Sheriff.

Sept. Term, A. D. 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 64. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

(copy)

Sum Covenant

MM&L, Esqs.

Pro.q

[fol. 426]

Exhibit 4.

September Term, 1939.

In the Superior Court of the State of Delaware,  
In and For New Castle County.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 64. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

New Castle County.—ss.:

Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, the defendant in this suit, was summoned to answer Phoenix Finance Corporation, a corpora-

tion of the State of Delaware, the plaintiff in this suit, of a plea of breach of covenant, and thereupon the said plaintiff, by Marvel, Morford & Logan, its attorneys, complains:

For That Whereas, heretofore, to-wit, on the 10th day of November, A. D. 1930, at Nennepin County, State of Minnesota, to-wit, at New Castle County aforesaid, by a written indenture or agreement in triplicate then and there made between Phoenix Finance System, Inc., a corporation of the State of Delaware, of the one part, John W. Shaffer & Company, a body corporate, of the second part, and the defendant of the third part, one part of which said indenture or agreement in triplicate, sealed with the seals of the parties thereto, including the defendant, the said plaintiff now brings into Court, the date whereof is the day and year aforesaid, the said parties thereto covenanted and agreed each with the other in words and figures as follows, to-wit:

“This agreement made and entered into in triplicate by and between Phoenix Finance System, Inc., first party, and John W. Shaffer & Company, second party, and Iowa-Wisconsin Bridge Company, third party, witnesseth:

[fol. 427] Whereas, First party has large financial means, Second party has contracted to build the Black Hawk Bridge at Lansing, Iowa and the Third party is owner of the Black Hawk Bridge, and

Whereas endorsements are necessary and valuable in the making of labor and material contracts, now therefore,

In consideration of one hundred forty (140) shares of stock of the Iowa-Wisconsin Bridge Company in hand paid by Third party, receipt of which is hereby acknowledged by First party and in consideration of the premises and provisions of this agreement, the First party does hereby agree to and by other endorsements does guarantee the cash payments required to be paid by the Second party to McClintic-Marshall Co. of Pittsburg and Industrial Contracting Company of Minneapolis according to contracts with said companies providing for work and material to build the Black Hawk Bridge at Lansing, Iowa.

In consideration of the premises and the values accruing to Second party from said guarantees by First party, the

Second party hereby agrees to meet and pay promptly when due all payments guaranteed by First party and Second party further agrees that it will pay on demand to First party any sums First party may be required to advance by reason of any of the endorsements or guarantees in connection with the building of the said Black Hawk Bridge.

In consideration of the premises and the benefits to Third party, by reason of any endorsements or guarantees of First party, the Third party hereby agrees that in event Second party fails to pay and discharge all of the payments aforesaid and/or first party is required to advance any sums of money by reason of any endorsement or guarantee in connection with the financing of the said Black Hawk Bridge then and in that event the Third party agrees to pay to First party on demand a sum equal to the total amount due to First party from all causes in connection with said financing of said bridge:

It is agreed by all parties hereto that in addition to the principal sum, interest at the rate of 8% per annum will accrue and be payable upon and with all sums remaining unpaid to First party after March 1st, 1931, and that all sums advanced by First party hereunder shall become payable to First party on demand.

Second party agrees to provide a Standard Completion Bond guaranteeing Completion of the Bridge, Premium to be paid by first party.

It is agreed that First party may have access to all the books and records of Second and Third parties at any and all reasonable times for the purpose of inspecting and observing the progress of the work on the bridge and the payments therefor.

Third party agrees that First party may take over possession of and control of the Black Hawk Bridge and all work and management of all things in connection therewith at any time during any default of or any failure of Third party to promptly meet any payments herein required to it to be made and that First party may have and hold said Bridge and all things belonging thereto until said sums are paid in full as required hereunder.

Executed and entered into for the respective corporations  
by their duly authorized officers at Minneapolis, Min-  
nesota this 10th day of November, 1930.

Attest:

PHOENIX FINANCE SYSTEM, INC.,  
[fol. 428] By J. A. Thompson, President,  
M. K. Thompson, Secretary. Corporate Seal.

JOHN W. SHAFFER & COMPANY,  
By John W. Shaffer, President.  
A. U. Harting, Secretary. Corporate Seal.

M. E. Lockart,  
Secretary.

IOWA-WISCONSIN BRIDGE  
COMPANY,  
By C. W. O'Connor,  
Chairman of the Board.

That in and by said agreement and for the considera-  
tions therein mentioned, Phoenix Finance System, Inc.  
agreed to and did thereby guarantee the cash payments  
required to be made by John W. Shaffer & Company to Mc-  
Clintic Marshall Co. of Pittsburgh, and Industrial Con-  
tracting Company of Minneapolis, according to certain ex-  
isting contracts between said John W. Shaffer & Company  
as principal contractor and said companies providing for  
labor and/or materials to build the Black Hawk Bridge at  
Lansing, Iowa, owned by the defendant; that the said John  
W. Shaffer & Company in and by said agreement covenan-  
ted and agreed to meet and pay promptly when due all pay-  
ments thus guaranteed by Phoenix Finance System, Inc.  
and to pay on demand to the said Phoenix Finance Sys-  
tem, Inc. any sums that it might be required to advance by  
reason of its guarantees in connection with the building  
of said Black Hawk Bridge; and that the defendant, in  
consideration of the premises and the benefits to it, in and  
by said agreement covenanted and agreed that in the event  
John W. Shaffer & Company failed to pay and discharge  
all of the payments aforesaid and/or Phoenix Finance Sys-  
tem, Inc. should be required to advance any sums of money

by reason of any endorsement or guarantee in connection with the financing of said Black Hawk Bridge, that it, the said defendant, would pay to Phoenix Finance System, Inc. on demand a sum equal to the total amount due said [fol. 429] Phoenix Finance System, Inc. from all causes in connection with the said financing of said Bridge, together with interest at the rate of 8% per annum upon all sums remaining unpaid to the said Phoenix Finance System, Inc. after March 1, 1931.

And the said plaintiff further says that a statute of the State of Minnesota in full force and effect at all the times herein mentioned, the same being Chapter 70, Laws of Minnesota, 1923, provided as follows:

"The interest for any legal indebtedness shall be at the rate of six dollars upon one hundred dollars for a year, unless a different rate is contracted for in writing; and no person shall directly or indirectly take or receive in money, goods, or things in action, or in any other way, any greater sum, or any greater value, for the loan or forbearance of money, goods, or things in action, than eight dollars on one hundred dollars for one year; and in the computation of interest upon any bond, note, or other instrument or agreement interest shall not be compounded, but any contract to pay interest, not usurious, upon interest overdue, shall not be construed to be usury. Contracts shall bear the same rate of interest after they become due as before, and any provision in any increase therein after maturity, or any increase therein after making and delivery, shall work a forfeiture of the entire interest; but this provision shall not apply to notes or contracts which bear no interest before maturity."

And the said plaintiff further says that prior to the making of said agreement as aforesaid, a certain contract in writing had been entered into between the said John W. Shaffer & Company and McClintic-Marshall Co. dated November 8, 1930, in connection with which the payments due McClintic-Marshall Co. from John W. Shaffer & Company had been guaranteed by the said Phoenix Finance System, Inc.; that said contract and the guarantee of Phoenix



Finance System, Inc. was in words and figures as follows, to-wit:

**“McCLINTIC-MARSHALL  
COMPANY,  
Steel Bridges, Buildings, Etc.**

General Offices, Pittsburgh, Pa.

1416 First National Bank Building,  
Chicago, Ill., Nov. 8, 1930.

Proposal-Contract  
D-2945

To John W. Shaffer & Company,  
Minneapolis, Minn.

(Hereinafter called the “Purchaser”)

[fol. 430] The McClintic-Marshall Company, a Delaware Corporation hereinafter called the “Contractor,” proposes, subject to the conditions herein, To Furnish and Deliver, f.o.b. cars its works with carload rate of freight alloed to Lansing, Iowa, the structural steelwork only for the Blackhawk Bridge at Lansing, Iowa, as shown on two unnumbered prints furnished by the Purchaser, and as further amplified by Purchaser’s detail drawings #1 to 17 inclusive.

Trusses for cantilever arms and anchor arms will be subpunched and reamed. All other work will be full sized punched work.

The Contractor shall have the privilege of substituting equivalent sections for those specified, subject to approval of the Engineer of Bridge Co.

The price quoted herein is based on the present freight rate. Should this rate be increased before shipment, amount of the increase is to be paid for by the Purchaser.

Material shall be routed as the Purchaser directs, provided such routing entails no additional cost to the Contractor.

Shop Paint: One (1) coat brown Nocore.

Price: The Purchaser shall pay the Contractor in funds current at par in New York or Pittsburgh for the same work, labor, services, and materials the sum of Seventy-

three Dollars and fifty cents (\$73.50) per ton of 2000 pounds.

Price is exclusive of all spotting, switching, or other delivery charges at destination.

**Terms of Payment:** On or about the last of each calendar month an estimate shall be made by the Contractor of the value of material received and of work fabricated and ready for shipment up to that time, which estimate shall be due and payable on the tenth (10th) of the month following.

If payments are based on unit weights, the total weight shall be calculated in accordance with the Code of Standard Practice of the American Institute of Steel Construction, Inc.

**Information to Be Furnished by Purchaser:** The Purchaser agrees to furnish within 30 days from date of acceptance of this Proposal, complete information necessary for ordering material and preparation of the shop drawings. Information for any provision in the structural steelwork for other trades is to be furnished in such time as not to interfere with the preparation of the shop drawings.

**Completion:** The Contractor agrees to complete the shipment of the 90' deck truss spans six (6) weeks after date of receipt of completely checked shop detail drawings, and to complete shipments of the entire work within ten (10) weeks after date of receipt of completely checked detail drawings by the Contractor, provided above information is furnished within the time above stipulated and that the Contractor is not delayed by strikes, fires, floods, storms, rolling mills, transportation, acts of civil or military authorities or other causes beyond his control.

No claims will be allowed for correction of alleged misfits unless notification is given the Contractor at the time and responsibility is proven. Ordinary inaccuracies of [fol. 431] shop work are not to be considered misfits.

Yours very truly,

McCLINTIC-MARSHALL COMPANY,  
C. H. HARLAN,

Resident Contracting Manager.

Accepted:

JOHN W. SHAFFER & COMPANY,  
By John W. Shaffer.

Date: November 8, 1930.

The payments for this work are hereby guaranteed by the Phoenix Finance System, Inc., a Delaware corporation.

PHOENIX FINANCE SYSTEM, INC.,  
By J. A. Thompson, President.

Date: November 8, 1930."

And the said plaintiff further says that after the making of said agreement as aforesaid, a certain contract in writing was entered into between the said John W. Shaffer & Company and Industrial Contracting Company dated November 11, 1930, in connection with which the payments due Industrial Contracting Company from John W. Shaffer & Company were guaranteed by the said Phoenix Finance System, Inc.; that said contract and the Guarantee of Phoenix Finance System, Inc. was in words and figures as follows, to-wit:

"This Agreement, made and executed this 11th day of November, 1930, by and between Industrial Contracting Company, a corporation organized under the laws of the State of Minnesota, hereinafter referred to as 'Sub-Contractor,' party of the first part, and John W. Shaffer & Company, a corporation organized under the laws of the State of Minnesota, hereinafter referred to as 'Contractor,' party of the second part,

Witnesseth:

That Whereas, John W. Shaffer & Company on the 11th day of November, 1930, entered into a contract with Iowa-Wisconsin Bridge Company, a Delaware corporation, for the construction of the superstructure of a bridge across the Mississippi River between Lansing, Iowa and a point approximately two miles South of DeSoto, Wisconsin, said bridge being known as the 'Black Hawk Bridge,' and

[fol. 432] Whereas, said John W. Shaffer & Company desires to sublet to Industrial Contracting Company the contract for the completion of said bridge, and

Whereas, the completion of said bridge shall be considered as comprising the erecting of the steel superstructure extending from Pier No. 1 to Pier No. 9, together with floor system, furnishing material for and erecting pile trestles over Henderson, Indian, Stevens, Winneschiek and Big Sloughs, furnishing material for and erecting toll house and greasing pit at Lansing end of bridge (but not including any equipment for storing or handling gas or oil);

Now, Therefore, This Agreement Witnesseth:

That the sub-contractor agrees to erect for the contractor the foregoing in accordance with the plans and specifications hereto attached and made a part hereof and said contractor in consideration thereof agrees to pay said sub-contractor an amount equal to cost plus fifteen per cent; provided, however, that based on the quantities herein stated, the sub-contractor agrees that the maximum cost to the contractor shall not exceed the sum of One Hundred Forty-one Thousand Seven Hundred Thirty-four (\$141,734.00) Dollars.

In the event that the cost plus fifteen per cent shall be less than the guaranteed maximum cost of \$141,734.00, then the sub-contractor shall receive additional compensation equal to one-half of the difference between the actual cost plus fifteen per cent, and said guaranteed maximum cost of One Hundred Forty-one Thousand Seven Hundred Thirty-four Dollars (\$141,734.00).

It Is Understood And Agreed that the quantities on which the guaranteed maximum cost is based and the unit prices to be applied to additions or deductions in quantities, in case there is a variation in same therefore it becomes necessary to increase or decrease the guaranteed maximum cost, are as follows:

1400 tons of Steel (erection only)—per ton	\$29.00
Piling in place—11514 Lineal ft. at	.65
Timber in place—449,754 FBM at	60.00 Per M
Asphalt floor—39,325 sq. ft. at	0.103
Concrete—372 cu. yds. at	14.00

In case the actual quantities vary from those stated herein, the guaranteed maximum cost shall be increased or decreased accordingly, and the guaranteed maximum cost

so computed shall be used in place of One Hundred Forty-one Thousand Seven Hundred Thirty-four Dollars (\$141,734.00) in determining the compensation due the sub-contractor.

The contractor agrees to pay the sub-contractor Seven Thousand Dollars (\$7,000.00) on the signing of this agreement, and on the 1st and 15th day of each month thereafter to make payment to sub-contractor as called for by estimates approved by the engineer for the Iowa-Wisconsin Bridge Company, and such estimates shall cover all expenditures and commitments made by the sub-contractor during the preceding semi-monthly period which are chargeable to the cost of the work. The contractor also agrees to pay to the sub-contractor within fifteen days after the completion of the work, and approval of the same by the engineer for Iowa-Wisconsin Bridge Company, and on proof that all bills are paid, an amount equal to the difference between the sum of the payments already made and the total payments due the sub-contractor under the terms of this agreement.

[fol. 433] Extras shall be ordered in writing and the sub-contractor shall be paid for same either an agreed price, stated in the order, or cost plus fifteen per cent.

The sub-contractor shall secure all necessary workmen's compensation and public liability insurance. It is understood and agreed that the cost of the work shall include the cost of such insurance, the cost of the sub-contractor's bond, and all necessary labor, material, lumber, timber, falsework, working trestle, fuel, insurance, rental of equipment and tools, freight to and from job, temporary buildings and such other items as are customarily considered as part of the cost thereof, at all reasonable times.

It Is Understood and Agreed that, if previous to the completion of this contract, the contractor shall at any time fail to make payments to the sub-contractor as heretofore specified, and continues in default ten (10) days after receiving written notice to perform, then the sub-contractor shall be relieved from any further obligation hereunder; provided, however, that for all work theretofore done the sub-contractor shall be entitled to be paid on a basis of cost, plus fifteen per cent, as hereinbefore provided.

It Is Further Agreed that in figuring the cost of work performed, the following schedule of equipment rentals shall be applied:

Clam Shell—	\$2.50 per day
Derrick including hoisting engine and boiler—	7.50 per day
Pile hammer—	2.50 per day
Concrete mixer and small concrete tools—	.40 per cu. yd.
Small tools for steel work	1.00 per ton steel
Compressor	10.00 per day
Pump	4.00 per day
Locomotive crane —	25.00 per day
Heavy timber tools	.50 per F.B.M.

Any equipment not listed above but found needed during construction will be charged to job at rental value governed by schedule established by Associated General Contractors of America.

Said contractor also agrees to furnish promptly to said sub-contractor such complete and reasonably detailed plans as the sub-contractor finds needed for the intelligent and rapid prosecution of the work. Said contractor also agrees to provide all field engineering, lines and grades.

Said contractor will, at its own expense, procure all necessary licenses, permits, franchises and rights of way. Said sub-contractor agrees to furnish a surety bond hereunder, the expense of the same to be included in the cost of the work.

The sub-contractor agrees to start work within three (3) days after the signing of this contract and the receipt from the contractor of the initial payment herein specified.

The sub-contractor agrees to proceed with the work so as to permit traffic over the bridge by March 10, 1931, provided that the shipping dates of the steel—which is to be furnished and paid for by the contractor—are such as to permit the completion of the work by said date under the weather conditions which are then found to exist.

[fol. 434] It Is Mutually Agreed that this agreement comprises the entire contract between the parties hereto, and



that there are no representations or agreements by either party except as set forth in said contract.

In Witness Whereof, the parties hereto have caused these presents to be executed in their corporate names, by their proper officers thereunto duly authorized by resolutions of the Board of Directors of said corporations, certified copies of which resolutions are hereto attached.

**INDUSTRIAL CONTRACTING  
COMPANY,**

By A. F. Crounse, Its, Pres.

Attest: R. C. McGrail, its, Secy.

In present of:

B. M. Storey,  
E. McGrail.

**JOHN W. SHAFFER & COMPANY,**  
By John W. Shaffer, Its, Pres.

Attest: W. W. Harting, Its, Secy.

M. White,  
Selma Holmberg.

In Consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it in hand paid by Industrial Contracting Company, and in order to induce said Industrial Contracting Company to enter into the attached contract between said Industrial Contracting Company and John W. Shaffer & Company, Phoenix Finance System, Inc., a corporation organized under the laws of the State of Delaware, does hereby guarantee, promise and agree to and with said Industrial Contracting Company that said John E. Shaffer & Company will faithfully and promptly pay all sums of money by it to be paid as set forth in the attached contract, at the times and in the manner therein provided.

Said Phoenix Finance System, Inc., expressly waives the making of any demand by said Industrial Contracting Company on said John W. Shaffer & Company for said payments, or any of them, and any notice of non-payment on the part of said John W. Shaffer & Company, it being the intention of said Phoenix Finance System, Inc., by the execution of this guarantee, to make itself liable for all pay-

ments to be made by said John W. Shaffer & Company to said Industrial Contracting Company under the attached contract in exactly the same manner as John W. Shaffer & Company is itself liable for said payments under the said terms of said contract.

In Testimony Whereof, the said Phoenix Finance System, Inc., has caused these presents to be executed in its corporate name, by its proper officers thereunto authorized, and its corporate seal to be hereunto affixed this 10 day of November, 1930.

(Corporate Seal) PHOENIX FINANCE SYSTEM, INC.  
By J. H. Thompson, Its Pres.

Attest: M. K. Thompson, Its Secy.

Witnesses:

John W. Shaffer.

[fol. 435]

Certificate.

I, M. K. Thompson, Secretary of Phoenix Finance System, Inc. do hereby certify that a special meeting of the Board of Directors of said corporation was held on the 10th day of November, 1930, of which meeting due notice was given to the members of said Board of Directors, and at which meeting a quorum of said Board was present, and the following resolution was unanimously adopted:

Resolved: That a certain contract between Phoenix Finance System, Inc. and the Industrial Contracting Company, providing for guaranteeing payment of certain sums covered by a certain agreement between the Industrial Contracting Company and John W. Shaffer & Company, bearing date November 10, 1930, and providing for the construction of the super-structure of the Black Hawk Bridge, be and the same is hereby approved, and the President and Secretary of this corporation are hereby authorized and directed to execute said contract on behalf of this corporation and to do all things necessary to put same into effect and consummation.

Signed this 10th day of November, A. D. 1930.

M. K. THOMPSON,  
Secretary, Phoenix Finance  
System, Inc."

And the said plaintiff further says that the agreement of November 10, 1930, and the covenants and promises of the said Phoenix Finance System, Inc. therein contained, was and were with reference inter alia to the guarantees of the said Phoenix Finance System, Inc. of the aforesaid contracts between John W. Shaffer & Company and McClintic-Marshall Co. and Industrial Contracting Company respectively.

And the said plaintiff further says that John W. Shaffer & Company failed to pay and discharge its obligations under the aforesaid contracts and that, in pursuance of its obligations as guarantor of said contract, Phoenix Finance System, Inc. advanced to the defendant, for the express purpose of meeting and paying said obligations, in cash and marketable bonds of the United States of America, sums aggregating Twenty-one Thousand Two Hundred Sixty-two Dollars and Seventy-one (\$21,262.71), lawful money of the United States of America, and that said sums were so advanced by said Phoenix Finance System, Inc. to the defendant and were used by the defendant with the consent and at the direction of Phoenix Finance System, Inc. for the purpose of paying the obligations of [fol. 436] John W. Shaffer & Company under the aforesaid contracts to McClintic-Marshall Co. and Industrial Contracting Company. Wherefore the said plaintiff says that in pursuance of the covenants and promises of Phoenix Finance System, Inc. under the agreement of November 10, 1930, said Phoenix Finance System, Inc. was required to advance and pay, and did advance and pay, by reason of its endorsements or guarantees in connection with the building of said Black Hawk Bridge the said sum (in cash or marketable bonds of the United States of America) of Twenty-one Thousand Two Hundred Sixty-two Dollars and Seventy-one Cents (\$21,262.71), lawful money as aforesaid.

And the said plaintiff further says that thereafter, to-wit, on the 1st day of January, 1932, the said Phoenix Finance System, Inc. assigned, transferred and set over to the plaintiff all of its assets, including accounts receivable and choses in action, and that the plaintiff purchased the said assets of the said Phoenix Finance System, Inc. for

a valuable consideration and agreed to assume the liabilities of Phoenix Finance System, Inc. whereby the said plaintiff became vested and still is vested with all of the rights of Phoenix Finance System, Inc. under said agreement of November 10, 1930.

And the said plaintiff further says that John W. Shaffer & Company, in violation of the covenants and agreements on its part to be performed as aforesaid, has wholly failed to pay either to Phoenix Finance System, Inc. or to the plaintiff the sums that Phoenix Finance System, Inc. was required to advance by reason of its guarantees as aforesaid, or any part thereof, or any interest thereon, although often requested and demanded so to do.

And although said Phoenix Finance System, Inc., prior to the first day of January, 1932, and the said plaintiff since that date, have always from the time of making of said agreement hitherto well and truly performed, fulfilled and kept all things in said agreement contained on their [fol. 437] part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, yet protesting that the said defendant has not performed, fulfilled or kept anything in said agreement contained on its part and behalf to be performed, fulfilled and kept, according to the tenor and effect, true intent and meaning thereof, the said plaintiff says that after the making of said agreement as aforesaid and after the payments by Phoenix Finance System, Inc. for the purpose of discharging its guarantees as aforesaid, the said defendant, although often demanded so to do, has hitherto wholly failed and refused and still does fail and refuse to pay to Phoenix Finance System, Inc. prior to January 1, 1932, or to the plaintiff since said date, the said sum of Twenty-one Thousand Two Hundred Sixty-two Dollars and Seventy-one Cents (\$21,262.71) together with interest thereon at the rate of 8% per annum from March 1, 1931, contrary to the tenor and effect, true intent and meaning of said agreement and of the covenants of the said defendant in that behalf so made as aforesaid.

And so the plaintiff in fact says that the said defendant (although often requested so to do) has not kept the said covenants so made by it as aforesaid but has broken the

same, and to keep the same with the said Phoenix Finance System, Inc. and with the plaintiff as the assignor of Phoenix Finance System, Inc., has hitherto wholly neglected and refused, and still doth neglect and refuse, to the same of the said plaintiff in the sum of Fifty Thousand Dollars (\$50,000.00), lawful money of the United States of America, and therefore it brings its suit, &c.

MARVEL, MORFORD &  
LOGAN,

Attorneys for Plaintiff.

[fol. 438] Agreement Sued Upon In This Action

### Agreement

This agreement made and entered into in triplicate by and between Phoenix Finance System, Inc., first party, and John W. Shaffer & Company, second party, and Iowa-Wisconsin Bridge Company, third party, witnesseth:

Whereas, First party has large financial means, Second party has contracted to build the Black Hawk Bridge at Lansing, Iowa and the Third party is owner of the Black Hawk Bridge, and

Whereas endorsements are necessary and valuable in the making of labor and material contracts, now therefore,

In consideration of one hundred forty (140) shares stock of the Iowa-Wisconsin Bridge Company in hand, paid by Third party, receipt of which is hereby acknowledged by First party and in consideration of the premises and provisions of this agreement, the First party does hereby agree to and by other endorsements does guarantee the cash payments required to be paid by the Second party to McClintic-Marshall Co. of Pittsburg and Industrial Contracting Company of Minneapolis according to contracts with said companies providing for work and material to build the Black Hawk Bridge at Lansing, Iowa.

In consideration of the premises and the values accruing to Second party from said guarantees by First party, the Second party hereby agrees to meet and pay promptly when due all payments guaranteed by First party and Second party further agrees that it will pay on demand to

First party any sums First party may be required to advance by reason of any of the endorsements or guarantees in connection with the building of the said Black Hawk Bridge.

In consideration of the premises and the benefits to Third party, by reason of any endorsements or guarantees [fol. 439] of First party, the Third party hereby agrees that in event Second party fails to pay and discharge all of the payments aforesaid and/or first party is required to advance any sums of money by reason of any endorsement or guarantee in connection with the financing of the said Black Hawk Bridge then and in that event the Third party agrees to pay to First party on demand a sum equal to the total amount due to First party from all causes in connection with said financing of said bridge.

It is agreed by all parties hereto that in addition to the principal sum, interest at the rate of 8% per annum will accrue and be payable upon and with all sums remaining unpaid to First party after March 1st, 1931, and that all sums advanced by First party hereunder shall become payable to First party on demand.

Second party agrees to provide a Standard Completion Bond guaranteeing completion of the Bridge, Premium to be paid by First party.

It is agreed that First party may have access to all the books and records of Second and Third parties at any and all reasonable times for the purpose of inspecting and observing the progress of the work on the bridge and the payments therefor.

Third party agrees that First party may take over possession of and control of the Black Hawk Bridge and all work and management of all things in connection therewith at any time during any default of or any failure of Third party to promptly meet any payments herein required of it to be made and that First party may have and hold said Bridge and all things belonging thereto until said sums are paid in full as required hereunder.



Executed and entered into for the respective corporations by their duly authorized officers at Minneapolis, Minnesota this 10th day of November, 1930.

Corporate Seal

PHOENIX FINANCE  
SYSTEM, INC.,

By J. A. Thompson,  
President.

Attest:

M. K. Thompson,  
Secretary.

[fol. 440]

JOHN W. SHAFFER &  
COMPANY,

By John W. Shaffer,  
President.

Corporate Seal

A. U. Harting,  
Secretary.

IOWA-WISCONSIN  
BRIDGE COMPANY,

By C. W. O'Connor  
Chairman of the Board.

Corporate Seal

M. E. Lockhart,  
Secretary.

[fol. 441] State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing pages contain a true copy of the Writ together with the Narr filed in the case there stated as the same now remains in the Superior Court of the said State, at Wilmington.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Sixteenth day of February A. D. One thousand nine hundred and forty.

MARTIN G. HANNIGAN,

(Seal)

Prothonotary.

State of Delaware, to-wit:—

I, Daniel J. Layton, Chief Justice of the State of Delaware, and as such, the Presiding Judge of the Superior Court of the said State, do hereby certify that the foregoing Record and attestation, made by Martin G. Hannigan Esq., Prothonotary of the said Court, within the County of New Castle, whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form, and made by the proper officer.

In testimony whereof, I hereunto set my hand, this Sixteenth day of February A. D. One thousand nine hundred and forty.

DANIEL J. LAYTON,  
Chief Justice.

[fol. 442] State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for the County of New Castle, do certify that the Honorable Daniel J. Layton, Esquire, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof, and still is, Chief Justice of the State of Delaware, and, as such, the Presiding Judge of the Superior Court of the said State, duly commissioned and sworn, to all whose acts, as such, full faith and credit are, and ought to be, given, as well in Courts of Justice as elsewhere.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Sixteenth day of February A. D. One thousand nine hundred and forty.

MARTIN G. HANNIGAN,  
(Seal) Prothonotary.

Filed in the District Court March 20, 1940.

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[fol. 443]

(Exhibit S. C. 5.)

New Castle County.—ss.:

The State of Delaware,

To the Sheriff of New Castle County,—Greeting:

Seal

We Command You, That you summon Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware late of your County company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Eighteenth day of September next to answer Phoenix Finance Corporation a corporation duly organized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington,  
the First day of May in the year of our Lord one  
thousand nine hundred and thirty-nine.

Issued July 11, 1939.

MARTIN G. HANNIGAN,  
Prothonotary.

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[fol. 444] Summoned Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware, by serving the within writ personally upon and leaving a copy of same with Charles S. Peabbleo, Assistant Secretary of Corporation Trust Company, a Delaware corporation, said Corporation Trust Company, a corporation as aforesaid, being Corporate Resident Agent in the State of Delaware for the said Iowa-Wisconsin Bridge Company, a corporation as aforesaid, on the fourteenth day of July A. D. 1939. The President or other head Officers of the said Iowa-Wisconsin Bridge

Company, a corporation as aforesaid, not being found within the State of Delaware,

So Answers,

SAMUEL M. FORD,  
Sheriff.

Cost	.75
Mlg.	.10
	<hr/>
	.85

Sept. Term, A. D. 1939.

Phoenix Finance Corporation a corporation duly organized and existing under the laws of the State of Delaware,

No. 79 vs.

Iowa-Wisconsin Bridge Company a corporation duly organized and existing under the laws of the State of Delaware.

(Copy)

Sum Case

MM&L, Esq.

Pro.q.

[fol. 445]

Exhibit 5

In the Superior Court of the State of Delaware in and for  
New Castle County

Summons Debt

September Term 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 79 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

State of Florida,

County of Pinellas—ss.:

Before Me, Clementing Japour, a Notary Public for the State of Florida and the County aforesaid, personally comes M. K. Thompson, Treasurer of Phoenix Finance

Corporation, the plaintiff above named, who being by me duly sworn according to law, deposes and says:

That she is Treasurer of Phoenix Finance Corporation, the said plaintiff; that the plaintiff is the owner and holder of the bonds sued upon in this action and hereinafter more particularly described; that annexed hereto are true and correct copies of the bonds sued upon in this action, the same being First Mortgage 6% Gold Bonds, Series B, of Iowa-Wisconsin Bridge Company, each in the denomination of Five Hundred Dollars (\$500.00) each dated February 1, 1932, and bearing Nos. 93 and 97 respectively; that the defendant wholly failed to pay the installment of interest on said Series B Bonds, including the bonds sued upon in this action, due August 1, 1933; that said default in the payment of interest having occurred and having continued for a period of sixty days, Beehtel Trust Company and A. H. Schubert, Trustees named in the Indenture of Mortgage Deed of Trust securing the issue of bonds of which the above mentioned bonds were a part, on the 13th day of July, 1933, by notice in writing to the defendant, declared the said defendant in default and the principal of all such bonds, including the bonds sued upon in this action, [fol. 446] to be due and payable immediately.

That the sum demanded of the said defendant is the sum of One Thousand Dollars (\$1000.00) with interest at the rate of six per centum per annum from the 1st day of February, 1933, and said deponent further says that she verily believes that the same is justly and truly due from the said defendant to the said plaintiff.

M. K. THOMPSON.

Sworn to and subscribed before me, this 31st day of July  
A. D. 1939.

CLEMENTINE JAPOUR,

(Seal)

Notary Public.

[fol. 447]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Beehtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing

On the  
1st Day of  
Feb. 1942  
No. 93  
\$15.00  
No. 20

on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR B. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1941  
No. 93  
\$15.00  
No. 19

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series

On the  
1st Day of  
Feb. 1941  
No. 93  
\$15.00  
No. 18



B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

[fol. 448]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1940  
No. 93  
\$15.00  
No. 17

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1940  
No. 93  
\$15.00  
No. 16

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Aug. 1939  
No. 93  
\$15.00  
No. 15

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Feb. 1939  
No. 93  
\$15.00  
No. 14

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax

On the  
1st Day of  
Aug. 1938  
No. 93  
\$15.00  
No. 13

which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,

Treasurer.

[fol. 449]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1938  
No. 93  
\$15.00  
No. 12

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1937  
No. 93  
\$15.00  
No. 11

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Feb. 1937  
No. 93  
\$15.00  
No. 10

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Aug. 1936  
No. 93  
\$15.00  
No. 9

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes,

On the  
1st Day of  
Feb. 1936  
No. 93  
\$15.00  
No. 8

and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1935  
No. 93  
\$15.00  
No. 7

OSCAR R. THORSON,  
Treasurer.

[fol. 450]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1935  
No. 93  
\$15.00  
No. 6

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Aug. 1934  
No. 93  
\$15.00  
No. 5

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Feb. 1934  
No. 93  
\$15.00  
No. 4

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes,

On the  
1st Day of  
Aug. 1933  
No. 93  
\$15.00  
No. 3



and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1944  
No. 93  
\$15.00  
No. 25

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1944  
No. 93  
\$15.00  
No. 24

OSCAR R. THORSON,  
Treasurer.

[fol. 451]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes,

On the  
1st Day of  
Aug. 1943  
No. 93  
\$15.00  
No. 23

On the  
1st Day of  
Feb. 1943  
No. 93  
\$15.00  
No. 22

On the  
1st Day of  
Aug. 1942  
No. 93  
\$15.00  
No. 21

and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1945  
No. 93  
\$15.00  
No. 26

OSCAR R. THORSON,  
Treasurer.

[fol. 452] \$500

\$500

State of Delaware  
Iowa-Wisconsin Bridge Company  
First Mortgage Gold Bond  
Six Per Cent

Series B

Due February 1, 1945

Iowa-Wisconsin Bridge Company, (hereinafter called the Company) for value received, hereby promises to pay on the First day of February, A. D. 1934, (unless this bond be sooner redeemed as hereinafter provided) to bearer, or if registered, to the registered owner of this bond, at the office of Bechtel Trust Company in the City of Davenport, Iowa,

Five Hundred Dollars (\$500.00)

in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932,

and to pay interest thereon from February First, 1932, at the rate of six per centum (6%) per annum, such interest to be payable at the office of said Trust Company, in like gold coin, semi-annually on the First day of February, and the First day of August, in each year, upon presentation and surrender, as they severally mature, of the coupons for such interest hereto annexed.

All payments on this bond, both of principal and interest, shall be made without deduction for any tax, assessment or other governmental charge (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) of such interest) which the company, its successors or assigns, may be required to pay thereon, or authorized to deduct or retain therefrom, under any present or future law or requirement of the United States of America, or of any state, county, municipality or other taxing authority therein.

This Bond is one of the duly authorized issue of bonds of the Company, of the series and designation indicated on the face hereof, which issue of bonds consists or may consist of several series of varying denominations, dates and tenor, all of which said bonds have been issued or are to be issued, under and in pursuance of, and (except as to any sinking fund which may be established for the exclusive benefit of one or more particular series of such bonds), are ~~e~~ l equally and ratably secured by an Indenture of Mortgage Deed of Trust, dated January First 1932, duly executed by the Company to Bechtel Trust Company and A. H. Schubert, Trustees, to which Indenture reference is hereby made for a description of the property thereby mortgaged, the nature and extent of the security thereby created, and the rights of the holders of said bonds in respect of such security.

In case of default in the payment of any installment of interest on any bond of said issue and the continuance thereof for a period of sixty days, the principal of all the bonds of said issue may be declared due and payable, otherwise be declared due and payable, prior to such maturity, upon the occurrence and continuance of default, as in said Indenture provided.

This Bond may, at the option of the Company, be redeemed on any interest date, prior to its regular maturity, after notice by publication in the City of Davenport, Iowa, once a week for four successive weeks, by paying the principal hereof, and the interest accrued hereon, to the date fixed for such redemption, plus a premium of one per centum (1%) of the principal, all in the manner and upon the conditions provided in said Indenture.

No recourse shall be had for the payment of the principal of or interest on this bond against any incorporator, stockholder, director, or officer of the Company, past present or future, either directly or through the Company, by virtue of any statute or constitution or by the enforcement of any assessment or penalty, or otherwise howsoever; any and all liability of incorporation, stockholders, directors and officers of the Company being hereby waived and released by each successive holder of this Bond.

[fol. 453] This Bond shall pass by delivery, unless registered in the owner's name on registration books of the Company, to be kept at the office of Bechtel Trust Company in the City of Davenport, Iowa, such registration being noted hereon by said Trust Company, after which no transfer shall be valid unless made on said books in the manner prescribed in said Indenture and similarly noted hereon; but the same may be discharged from registry by being transferred in like manner to bearer, after which transferability by delivery shall be restored and again, from time to time, it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon by delivery merely, and payment to the bearer thereof shall discharge the Company in respect of the interest therein mentioned whether or not the bond shall have been registered.

Neither this Bond nor any of the coupons for interest thereon, shall become or be valid until the bond shall have been authenticated by the certificate endorsed hereon, duly signed by Bechtel Trust Company, one of the Trustees under said Indenture, or by its successor in said trust.

In Witness Whereof, Iowa-Wisconsin Bridge Company has caused this Bond to be signed by its President or Vice President and its corporate seal to be hereunto affixed, and to be attested by its Secretary, and the coupons for such interest bearing the facsimile signature of its Treasurer, to be attached hereto as of the First day of February, A. D. 1932.

IOWA-WISCONSIN BRIDGE  
COMPANY,  
By Emory H. English, President.

Attest:

Oscar R. Thorson,  
Secretary.

[fol. 454]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1942  
No. 97  
\$15.00  
No. 20

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax

On the  
1st Day of  
Aug. 1941  
No. 97  
\$15.00  
No. 19



which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1941  
No. 97  
\$15.00  
No. 18

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1940  
No. 97  
\$15.00  
No. 17

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

[fol. 455]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes,

On the  
1st Day of  
Feb. 1940  
No. 97  
\$15.00  
No. 16

On the  
1st Day of  
Aug. 1939  
No. 97  
\$15.00  
No. 15

On the  
1st Day of  
Feb. 1939  
No. 97  
\$15.00  
No. 14

and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Aug. 1938  
No. 97  
\$15.00  
No. 13

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

On the  
1st Day of  
Feb. 1938  
No. 97  
\$15.00  
No. 12

OSCAR R. THORSON,

Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

[fol. 456]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes,

On the  
1st Day of  
Aug. 1937  
No. 97  
\$15.00  
No. 11

On the  
1st Day of  
Feb. 1937  
No. 97  
\$15.00  
No. 10

On the  
1st Day of  
Aug. 1936  
No. 97  
\$15.00  
No. 9

and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Feb. 1936  
No. 97  
\$15.00  
No. 8

On the  
1st Day of  
Aug. 1935  
No. 97  
\$15.00  
No. 7

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

[fol. 457]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes,

On the  
1st Day of  
Feb. 1935  
No. 97  
\$15.00  
No. 6

On the  
1st Day of  
Aug. 1934  
No. 97  
\$15.00  
No. 5

On the  
1st Day of  
Feb. 1934  
No. 97  
\$15.00  
No. 4



and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

On the  
1st Day of  
Aug. 1933  
No. 97  
\$15.00  
No. 3

On the  
1st Day of  
Feb. 1945  
No. 97  
\$15.00  
No. 26

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

[fol. 458]

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes,

On the  
1st Day of  
Aug. 1944  
No. 97  
\$15.00  
No. 25

On the  
1st Day of  
Feb. 1944  
No. 97  
\$15.00  
No. 24

On the  
1st Day of  
Aug. 1943  
No. 97  
\$15.00  
No. 23

and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-Wisconsin Bridge Company will pay the bearer hereof at the office of Bechtel Trust Company in the City of Davenport, Iowa Fifteen and no/100 Dollars (\$15.00) in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, without deduction for taxes (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) hereof) being semi-annual interest then due upon its First Mortgage Gold Bond, Series B, unless said bond shall have been called for previous redemption.

OSCAR R. THORSON,  
Treasurer.

Iowa-W

On the  
1st Day of  
Feb. 1943  
No. 97  
\$15.00  
No. 22

On the  
1st Day of  
Aug. 1942  
No. 97  
\$15.00  
No. 21

[fol. 459] \$500

\$500

State of Delaware  
Iowa-Wisconsin Bridge Company  
First Mortgage Gold Bond  
Six Per Cent

Series B

Due February 1, 1945

Iowa-Wisconsin Bridge Company (hereinafter called the Company) for value received, hereby promises to pay on the First day of February, A. D. 1945 (unless this bond be sooner redeemed as hereinafter provided) to bearer, or if registered, to the registered owner of this bond, at the office of Bechtel Trust Company in the City of Davenport, Iowa

Five Hundred Dollars (\$500.00)

in gold coin of the United States of America of the standard of weight and fineness existing on January First, 1932, and to pay interest thereon from February First, 1932, at the rate of six per centum (6%) per annum, such interest to be payable at the office of said Trust Company, in like gold coin, semi-annually on the First day of February, and the First day of August, in each year, upon presentation and surrender, as they severally mature, of the coupons for such interest hereto annexed.

All payments on this bond, both of principal and interest, shall be made without deduction for any tax, assessment or other governmental charge (except succession and inheritance taxes, and that portion of any federal income tax which may be in excess of two per centum (2%) of such interest) which the Company, its successors or assigns, may be required to pay thereon, or authorized to deduct or retain therefrom, under any present or future law or requirement of the United States of America, or of any state, county, municipality or other taxing authority therein.

This bond is one of the duly authorized issue of bonds of the Company, of the series and designation indicated on the face hereof, which issue of bonds consists or may consist of several series of varying denominations, dates and tenor, all of which said bonds have been issued or are to be issued, under and in pursuance of, and (except as to any

sinking fund which may be established for the exclusive benefit of one or more particular series (~~except as to any~~) of such bonds), and are all equally and ratably secured by an Indenture of Mortgage Deed of Trust, dated January First, 1932, duly executed by the Company to Bechtel Trust Company and A. H. Schubert, Trustees, to which Indenture reference is hereby made for a description of the property thereby mortgaged, the nature and extent of the security thereby created, and the rights of the holders of said bonds in respect of such security.

In case of default in the payment of any installment of interest on any bond of said issue and the continuance thereof for a period of sixty days, the principal of all the bonds of said issue may be declared due and payable, prior to their regular maturity, in the manner and upon the conditions expressed in said Indentures; and may otherwise be declared due and payable, prior to such maturity, upon the occurrence and continuance of default, as in said Indenture provided.

This Bond may, at the option of the Company, be redeemed on any interest date, prior to its regular maturity, after notice by publication in the City of Davenport, Iowa, once a week for four successive weeks, by paying the principal hereof, and the interest accrued hereon, to the date fixed for such redemption, plus a premium of one per centum (1%) of the principal, all in the manner and upon the conditions provided in said Indenture.

No recourse shall be had for the payment of the principal of or interest on this bond against any incorporator, stockholder, director, or officer of the Company, past, [fol. 460] present or future, either directly or through the Company, by virtue of any statute or constitution, or by the enforcement of any assessment or penalty, or otherwise howsoever; any and all liability of incorporators, stockholders, directors and officers of the Company being hereby waived and released by each successive holder of this Bond.

This Bond shall pass by delivery, unless registered in the owner's name on registration books of the Company, to be kept at the office of Bechtel Trust Company, in the City of Davenport, Iowa, such registration being noted hereon

by said Trust Company, after which no transfer shall be valid unless made on said books in the manner prescribed in said Indenture and similarly noted hereon; but the same may be discharged from registry by being transferred in like manner to bearer, after which transferability by delivery shall be restored and again, from time to time, it may be registered or transferred to bearer as before. Such registration, however, shall not affect the transferability of the coupons for the interest hereon by delivery merely, and payment to the bearer thereof shall discharge the Company in respect of the interest therein mentioned whether or not the bond shall have been registered.

Neither this Bond nor any of the coupons for interest thereon, shall become or be valid until the bond shall have been authenticated by the certificate endorsed hereon, duly signed by Bechtel Trust Company, one of the Trustees under said Indenture, or by its successor in said trust.

In Witness Whereof, Iowa-Wisconsin Bridge Company, has caused this Bond to be signed by its President or Vice President and its corporate seal to be hereunto affixed, and to be attested by its Secretary, and the coupons for such interest bearing the facsimile signature of its Treasurer, to be attached hereto as of the First day of February A. D. 1932.

IOWA-WISCONSIN BRIDGE  
COMPANY,

EMORY H. ENGLISH, President.

OSCAR R. THORSON, Secretary.

[fol. 461]

Exhibit 5-a.

In the Superior Court of the State of Delaware in and for  
New Castle County.

September Term 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 79. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.



The plaintiff above named, by Marvel, Morford & Logan, its attorneys, says that it has mistaken the form of action suited to its claim in the above cause, and moves that it be permitted to amend the form of the above action from an action of case to an action of debt, that being the form of action suited to its claim.

MARVEL, MORFORD &  
LOGAN,

Attorneys for Plaintiff.

And Now, To-Wit, this 18th day of September, A. D. 1939, the within motion having been considered by the Court, the same is allowed, and the form of the within action is changed from an action of case to an action of debt.

(S. L.) F. L. SPEAKMAN,  
J.

[fol. 462] In the Superior Court of the State of Delaware  
in and for New Castle County.

September Term 1939.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 79. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

New Castle County—ss.

Iowa-Wisconsin Bridge Company, a corporation as aforesaid, the defendant above named, was summoned to answer Phoenix Finance Corporation, a corporation as aforesaid, the plaintiff above named, of a plea that it render to the said plaintiff the sum of Two Thousand Dollars (\$2,000.00), lawful money of the United States of America, which it owes to and unjustly detains from it, whereupon the said plaintiff, by Marvel, Morford & Logan, its attorneys, complains:

1. For That Whereas, the said defendant, heretofore, to-wit, on the first day of February, A. D. 1932, at the County of Scott, State of Iowa, to-wit, at the County of

New Castle aforesaid, by its certain writing obligatory, sealed with its seal, known as Iowa-Wisconsin Bridge Company First Mortgage Gold Bond, Series B, No. 93, acknowledged itself to be held and firmly bound to the bearer thereof, or if registered, to the registered owner thereof, at the office of Bechtel Trust Company in the City of Davenport, Iowa, in the sum of Five Hundred Dollars (\$500.00) above demanded, to be paid to such bearer or registered owner on the First day of February, A. D. 1945, in gold coin of the United States of America of the standard of weight and fineness existing on January 1, 1932, and to pay interest [fol. 463] thereon from February 1, 1932 at the rate of 6% per annum, such interest to be payable at the office of said Trust Company in like gold coin semi-annually on the first day of February and the first day of August in each year upon presentation and surrender as they severally mature of the coupons for such interest annexed to said writing obligatory, and the said plaintiff further says that the obligations of the defendant in and by said writing obligatory were subject to certain terms and conditions therein expressed, including inter alia the following:

“In case of default in the payment of any installment of interest on any bond of said issue and the continuance thereof for a period of sixty days, the principal of all the bonds of said issue may be declared due and payable, prior to their regular maturity, in the manner and upon the conditions expressed in said Indenture; and may otherwise be declared due and payable, prior to such maturity, upon the occurrence and continuance of default, as in said Indenture provided.”

And the said plaintiff further says that said writing obligatory was not registered and that the defendant wholly failed and refused to pay to the owner, holder or bearer thereof the interest due on the first day of August, 1933, although said owner, holder or bearer duly presented and surrendered the coupon for such interest for payment, according to the tenor and effect of said writing obligatory; that such default in the payment of interest having occurred and having continued for a period of sixty days, Bechtel Trust Company and A. H. Schubert, Trustees

named in the Indenture of Mortgage Deed of Trust securing the issue of bonds of which the writing obligatory herein mentioned was a part, on the 13th day of July, A. D. 1933, by notice in writing to the defendant declared the said defendant in default and the principal of all such bonds, including the writing obligatory sued upon in this action, to be due and payable immediately.

And the said plaintiff further says that it is the owner and holder of the writing obligatory sued upon in this action and the bearer thereof, according to the tenor and [fol. 464] effect of the same, and that the said defendant (although often requested so to do) has not as yet paid the said sum of Five Hundred Dollars (\$500.00), parcel of the sum above demanded, or interest thereon, according to the tenor and effect of said writing obligatory, or any part thereof, to the plaintiff as such bearer of said writing obligatory, or to any bearer thereof, after the declaration of said default but has hitherto wholly neglected and refused and still neglects and refuses so to do. Wherefore the said plaintiff says that it is injured and has sustained damage to the amount of One Thousand Dollars (\$1,000.00), lawful money of the United States of America, and therefore it brings its suit, &c.

And the said plaintiff brings here into Court the said writing obligatory sealed as aforesaid, which gives sufficient evidence to the Court here of the debt aforesaid, in the form aforesaid, the date whereof is the day and year in that behalf above mentioned. A true and correct copy of said writing obligatory designated "Copy of Instrument of Writing Sued Upon —A," is attached hereto and by this reference the same and the several terms and conditions thereof are made a part of this court of this declaration.

2. And Whereas Also, the said defendant, heretofore, to-wit, on the first day of February, A. D. 1932, at the County of Scott, State of Iowa, to-wit, at the County of New Castle aforesaid, by its certain writing obligatory, sealed with its seal, known as Iowa-Wisconsin Bridge Company First Mortgage Gold Bond, Series B, No. 97, acknowledged itself to be held and firmly bound to the bearer thereof, or if registered, to the registered owner thereof, at the

office of Bechtel Trust Company in the City of Davenport, Iowa, in the sum of Five Hundred Dollars (\$500.00) above demanded, to be paid to such bearer or registered owner on the first day of February, A. D. 1945, in gold coin of the United States of America of the standard of weight and fineness existing on January 1, 1932, and to pay interest thereon from February 1, 1932 at the rate of 6% per annum, such interest to be payable at the office of said Trust Company in like gold coin semi-annually on the first day of February and the first day of August in each year upon presentation and surrender as they severally mature of the coupons for such interest annexed to said writing obligatory, and the said plaintiff further says that the obligations of the defendant in and by said writing obligatory were subject to certain terms and conditions therein expressed, including inter alia the following:

“In case of default in the payment of any installment of interest on any bond of said issue and the continuance thereof for a period of sixty days, the principal of all the bonds of said issue may be declared due and payable, prior to their regular maturity, in the manner and upon the conditions expressed in said Indenture; and may otherwise be declared due and payable, prior to such maturity, upon the occurrence and continuance of default, as is said Indenture provided.”

And the said plaintiff further says that said writing obligatory was not registered and that the defendant wholly failed and refused to pay to the owner, holder or bearer thereof the interest due on the first day of August, 1933, although said owner, holder or bearer duly presented and surrendered the coupon for such interest for payment, according to the tenor and effect of said writing obligatory; that such default in the payment of interest having occurred and having continued for a period of sixty days, Bechtel Trust Company and A. H. Schubert, Trustees named in the Indenture of Mortgage Deed of Trust securing the issue of bonds of which the writing obligatory herein mentioned was a part, on the 13th day of July, A. D. 1933, by notice in writing to the defendant declared the said defendant in default and the principal of all such bonds, including the writing obligatory sued upon in this action, to be due and payable immediately.

And the said plaintiff further says that it is the owner and holder of the writing obligatory sued upon in this action and the bearer thereof, according to the tenor and effect of the same, and that the said defendant (although often requested so to do) has not as yet paid the said sum of Five Hundred Dollars (\$500.00), parcel of the sum above [fol. 466] demanded, or interest thereon, according to the tenor and effect of said writing obligatory, or any part thereof, to the plaintiff as such bearer of said writing obligatory, or to any bearer thereof, after the declaration of said default but has hitherto wholly neglected and refused and still neglects and refuses so to do. Wherefore the said plaintiff says that it is injured and has sustained damage to the amount of One Thousand Dollars (\$1,000.00) lawful money of the United States of America, and therefore it brings its suit, &c.

And the said plaintiff brings here into Court the said writing obligatory sealed as aforesaid, which gives sufficient evidence to the Court here of the debt aforesaid, in the form aforesaid, the date whereof is the day and year in that behalf above mentioned. A true and correct copy of said writing obligatory designated "Copy of Instrument of Writing Sued Upon -B," is attached hereto and by this reference the same and the several terms and conditions thereof are made a part of this count of this declaration.

MARVEL, MORFORD & LOGAN,

Attorneys for Plaintiff.

[fol. 467] State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing pages contain a true copy of the Affidavit of Demand & Writ together with the Narr filed in the case there stated as the same now remains in the Superior Court of the said State, at Wilmington.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Sixteenth day of February A. D. One thousand nine hundred and forty.

MARTIN G. HANNIGAN,

(Seal)

Prothonotary.

State of Delaware, to-wit:—

I, Daniel J. Layton, Chief Justice of the State of Delaware, and as such, the Presiding Judge of the Superior Court of the said State, do hereby certify that the foregoing Record and attestation, made by Martin G. Hannigan, Esq., Prothonotary of the said Court within the County of New Castle, whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form, and made by the proper officer.

In testimony whereof, I hereunto set my hand, this Sixteenth day of February A. D. One thousand Nine hundred and forty.

DANIEL J. LAYTON,  
Chief Justice.

[fol. 468] State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for the County of New Castle, do certify that the Honorable Daniel J. Layton, Esquire, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof, and still is, Chief Justice of the State of Delaware, and, as such, the Presiding Judge of the Superior Court of the said State, duly commissioned and sworn, to all whose acts, as such, full faith and credit are, and ought to be, given, as well in Courts of Justice as elsewhere.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Sixteenth day of February A. D. One thousand nine hundred and forty.

MARTIN G. HANNIGAN,  
(Seal) Prothonotary.

Filed in the District Court March 20, 1940.

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[fol. 469]

(Exhibit S. C.-6)

Certificate of County Recorder of Allamakee County,  
State of Iowa.

3462

State of Iowa,

Allamakee County—ss.:

Office of County Recorder, Waukon, Iowa, Sept. 27th., 1939

I, Emmett C. Sullivan, County Recorder of Allamakee County, State of Iowa, do hereby Certify, that the foregoing Copy of Mortgage is a full, true and correct copy of

625

such Mortgage as it appears of record on page 626 of book L of the Town Lot records in my custody in the office of the County Recorder of Allamakee County, State of Iowa.

EMMETT C. SULLIVAN,

(Seal)

County Recorder of Allamakee  
County, State of Iowa.

[fol. 470]

Mortgage By And Between  
Iowa-Wisconsin Bridge Company  
To  
Phoenix Finance System, Inc.

Know All Men By These Presents: That the Iowa-Wisconsin Bridge Company, a Delaware corporation, herein-after sometimes called the "Mortgagor", in consideration of the sum of Fifty Thousand Dollars (\$50,000.00) in hand paid by the Phoenix Finance System, Inc., a Delaware corporation, hereinafter sometimes called the "Mortgagee", does hereby sell and convey unto the said Phoenix Finance System, Inc., the following described premises and property situated in the County of Allamakee, State of Iowa, and in Crawford County, Wisconsin, to-wit:

"West Forty (40) feet of Bellou Street in the City of Lansing, Iowa, as vacated by the City Council of said City of Lansing, Iowa, on October 21, 1930.

"Lots One (1) and Two (2), Block Eight (8), City of Lansing, Iowa.

"Lots One (1) and Two (2), Block Nine (9), City of Lansing, Iowa.

"That part of Lots Three (3) and Five (5) and the Northeast Quarter of Southeast Quarter ( $NE\frac{1}{4} SE\frac{1}{4}$ ) and Southeast Quarter of Northeast Quarter ( $SE\frac{1}{4} NE\frac{1}{4}$ ) of Section Four (4), Township Ten (10), Range Seven (7), and that part of Lots One (1), Seven (7), and Eight (8), in Section Three (3), Township Ten (10), Range Seven (7), and that part of the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section Thirty-four (34), Township Eleven (11), Range Seven (7), and that part of Section Thirty-five (35), Township Eleven (11), Range Seven (7), all in Crawford County, State of Wisconsin, which lies one hundred (100) feet on each side of the center line of a roadway; said center line is described as follows:

"Beginning at a point on the easterly bank of the Mississippi River distant seven hundred (700) feet northwest-  
[fol. 471] erly from the point of intersection of the south line of Section Four (4), Township Ten (10), Range Seven (7), with the easterly bank of the Mississippi River, thence north sixty-three degrees ( $63^\circ$ ) east magnetic bearing, sixteen hundred and fifty (1650) feet, thence north fifty-one degrees ( $51^\circ$ ) east magnetic, twenty-eight hundred (2800) feet, thence north thirty-eight degrees ( $38^\circ$ ) east magnetic, thirty-two hundred (3200) feet to Station Ninety (90), which is a point eleven hundred and seventeen (1117) feet west of the southeast corner of Section Thirty-four (34), Township Eleven (11), Range Seven (7), thence north thirty-eight degrees ( $38^\circ$ ) east magnetic, thirty-three hundred (3300) feet, thence north twenty-three degrees ( $23^\circ$ ) east magnetic, fourteen hundred and seventy-eight (1478) feet, thence north fifty-seven degrees ( $57^\circ$ ) east magnetic, one thousand (1000) feet, to the westerly banl of the Wineshiek slough."

together with any and all other real property hereafter acquired by the Iowa-Wisconsin Bridge Company in either Crawford County, Wisconsin, or Allamakee County, Iowa, and together with the toll bridge and other structures, buildings and improvements erected upon said premises, or to be erected thereon, and all appurtenances thereto; all rights of way and easements; all franchises and rights in connection therewith; and all personal property which the Mortgagor now owns or may hereafter acquire, which

said personal property is now or may become a part of the so-called toll bridge of the Mortgagor;

And the said Iowa-Wisconsin Bridge Company hereby covenants with the said Phoenix Finance System, Inc., that it holds said premises by title in fee simple and has good right and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever save and except a certain lease [fol. 472] agreement made between the Mortgagor and John W. Shaffer, dated December 2, 1930; and the said Iowa-Wisconsin Bridge Company covenants and warrants to defend the said premises against the lawful claims of all persons whomsoever.

Provided, always, and these presents are made upon this express condition, that if the said Iowa-Wisconsin Bridge Company, its successors and assigns, shall pay, or cause to be paid, to the said Phoenix Finance System, Inc., its successors or assigns, the sum of Fifty Thousand Dollars (\$50,000.00) on or before the 10th day of September, 1931, with interest thereon at the rate of eight per cent per annum, according to the tenor and effect of a promissory note of said Iowa-Wisconsin Bridge Company in said amount, payable to the said Phoenix Finance System, Inc., bearing date March 10th, 1931, then these presents to be void, otherwise to remain in full force.

And the said Iowa-Wisconsin Bridge Company further agrees that the said Phoenix Finance System, Inc., at any time during the existence of this indebtedness, or any part thereof, and until the same is fully paid, shall have full power, and is hereby authorized as attorney-in-fact for said Iowa-Wisconsin Bridge Company, to pay all liens of any kind, whether prior or subsequent, that may in any manner affect the title to the lands, buildings, structures, toll bridge and appurtenances herein and hereby conveyed, and for the repayment of all moneys so paid, together with interest thereon at the rate of eight per cent per annum, payable semi-annually, this indenture shall be like security, in like manner, and with like effect as for the payment of said note.

[fol. 473] And it is hereby further agreed that in case it becomes necessary to commence proceedings to foreclose

this mortgage, then the said Iowa-Wisconsin Bridge Company, in addition to the amount of said debt, interest and costs, agrees to pay to the Mortgagee herein named, or the assignee of the Mortgagee herein, a reasonable attorney's fee for collecting the same, which fee shall be included in the judgment in such foreclosure sale.

In Testimony Whereof, the said Mortgagor has caused these presents to be executed in its corporate name by its Vice-President and its Treasurer, and its corporate seal to be hereunto affixed this 10th day of March, 1931.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By A. B. Wilder,

Its Vice President, and

By Oscar R. Thorson,

Its Treasurer.

In the Presence of

M. White,

Raymond E. Henneman.

(Seal)

State of Minnesota,

County of Hennepin—ss.

On this 10th day of March, 1931, before me, a notary public within and for said County, personally appeared A. B. Wilder and Oscar R. Thorson, to me personally known, who, being each by me duly sworn did say that they are respectively the Vice President and Treasurer of the Iowa-Wisconsin Bridge Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that [fol. 474] said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said A. B. Wilder and Oscar R. Thorson acknowledged said instrument to be the free act and deed of said corporation.

M. R. JOHNSTONE,

(Seal)

Notary Public.

My Commission Expires August 31, 1935.

The undersigned, The Standard Shares Holding Company, a corporation organized under the laws of the State

of Minnesota, does hereby approve of and consent to the foregoing mortgage executed by and between the Iowa-Wisconsin Bridge Company, Mortgagor, and Phoenix Finance System, Inc., Mortgagee, in the sum of \$50,000.00, which said mortgage bears date the 10th day of March, 1931.

Signed this 28th day of April, 1931.

THE STANDARD SHARES  
HOLDING COMPANY,

By John W. Shaffer,

Its President and

(Seal)

By M. E. Lockhart, Its Secretary.

The undersigned, John W. Shaffer, does hereby approve of and consent to the foregoing mortgage executed by and between Iowa-Wisconsin Bridge Company, Mortgagor, and Phoenix Finance System, Inc., Mortgagee, in the sum of \$50,000.00, bearing date the 10th day of March, 1931; it being specifically understood that the undersigned does not hereby intend to, nor does he, prejudice any right and interest which he has in and to the premises described in said mortgage arising by reason of that certain lease agreement made and signed the 2nd day of December, 1930, between Iowa-Wisconsin Bridge Company as Lessor and the undersigned as Lessee.

Signed this 28th day of April, 1931.

JOHN W. SHAFFER.

[fol. 475]

No. 2149

Iowa-Wisconsin Bridge Company

To

Phoenix Finance System, Inc.

State of Iowa,

Allamakee County—ss.

Filed for record the 2nd. day of June, A. D. 1939, at 8:10 o'clock A. M.

EMMETT C. SULLIVAN,

Recorder.

Recorded in Book "L" Pages 625-626 of Town Lot Mortgages.

Filed in the District Court March 20, 1940.

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[fol. 476]

(Exhibit S. C.-7.)

No. 114805

**Mortgage**

Know All Men By These Presents: That the Iowa-Wisconsin Bridge Company, a Delaware corporation, hereinafter sometimes called the "Mortgagor", in consideration of the sum of Fifty Thousand Dollars (\$50,000.00) in hand paid by the Phoenix Finance System, Inc., a Delaware corporation, hereinafter sometimes called the "Mortgagee", does hereby sell and convey unto the said Phoenix Finance System, Inc., the following described premises and property situated in the County of Allamakee, State of Iowa, and in Crawford County, Wisconsin, to-wit:

"West Forty (40) Feet of Bellou Street in the City of Lansing, Iowa, as vacated by the City Council of said City of Lansing, Iowa, on October 21, 1929.

"Lots One (1) and Two (2), Block Eight (8), City of Lansing, Iowa.

"Lots One (1) and Two (2), Block Nine (9), City of Lansing, Iowa.

"That part of Lots Three (3) and Five (5) and the Northeast Quarter of Southeast Quarter ( $NE\frac{1}{4}SE\frac{1}{4}$ ) and Southeast Quarter of Northeast Quarter ( $SE\frac{1}{4}NE\frac{1}{4}$ ) of Section Four (4), Township Ten (10), Range Seven (7), and that part of Lots One (1), Seven (7), and Eight (8), in Section Three (3), Township Ten (10), Range Seven (7), and that part of the Southeast Quarter ( $SE\frac{1}{4}$ ) of Section Thirty-four (34), Township Eleven (11), Range Seven (7), and that part of Section Thirty-five (35), Township Eleven (11), Range Seven (7), all in Crawford County, State of Wisconsin, which lies one hundred (100) feet on each side of the center line of a roadway; said center line is described as follows:

"Beginning at a point on the easterly bank of the Mississippi River distant seven hundred (700) feet northwest-ly from the point of intersection of the south line of Sec-[fol. 477] tion Four (4), Township Ten (10), Range Seven (7), with the easterly bank of the Mississippi River, thence north sixty-three degrees ( $63^{\circ}$ ) east magnetic bearing,



sixteen hundred and fifty (1650) feet, thence north fifty-one degrees ( $51^{\circ}$ ) east magnetic, twenty-eight hundred (2800) feet, thence north thirty-eight degrees ( $38^{\circ}$ ) east magnetic, thirty-two hundred (3200) feet to Station Ninety, (90), which is a point eleven hundred and seventeen (1117) feet west of the southeast corner of Section Thirty-four (34), Township Eleven (11), Range Seven (7), thence north thirty-eight degrees ( $38^{\circ}$ ) east magnetic, thirty-three hundred (3300) feet, thence north twenty-three degrees ( $23^{\circ}$ ) east magnetic, fourteen hundred and seventy-eight (1478) feet, thence north fifty-seven degrees ( $57^{\circ}$ ) east magnetic, one thousand (1000) feet, to the westerly bank of the Winneshiek slough."

together with any and all other real property hereafter acquired by the Iowa-Wisconsin Bridge Company in either Crawford County, Wisconsin, or Allamakee County, Iowa, and together with the toll bridge and other structures, buildings and improvements erected upon said premises, or to be erected thereon, and all appurtenances thereto; all rights of way and easements; all franchises and rights in connection therewith; and all personal property which the Mortgagor now owns or may hereafter acquire, which said personal property is now or may become a part of the so called toll bridge of the Mortgagor;

And the said Iowa-Wisconsin Bridge Company hereby covenants with the said Phoenix Finance System, Inc., that it holds said premises by title in fee simple and has good right and lawful authority to sell and convey the same; that said premises are free and clear of all liens and encumbrances whatsoever save and except a certain lease agreement made between the Mortgagor and John W. Shaffer dated December 2, 1930; And the said Iowa-Wisconsin Bridge Company covenants and warrants to defend the said premises against the lawful claims of all persons whomsoever.

Provided, always, and these presents are made upon this express condition, that if the said Iowa-Wisconsin Bridge Company, its successors and assigns, shall pay, or cause to be paid, to the said Phoenix Finance System, Inc., its successors or assigns, the sum of Fifty Thousand Dollars (\$50,000) on or before the 10th day of September, 1931,

with interest thereon at the rate of eight per cent per annum, according to the tenor and effect of a promissory note of said Iowa-Wisconsin Bridge Company in said amount, payable to the said Phoenix Finance System, Inc., [fol. 478] bearing date March 10th, 1931, then these presents to be void, otherwise to remain in full force.

And the said Iowa-Wisconsin Bridge Company further agrees that the said Phoenix Finance System, Inc., at any time during the existence of this indebtedness, or any part thereof, and until the same is fully paid, shall have full power, and is hereby authorized as attorney-in-fact for said Iowa-Wisconsin Bridge Company, to pay all liens of any kind, whether prior or subsequent, that may in any manner affect the title to the lands, buildings, structures, toll bridge and appurtenances herein and hereby conveyed, and for the repayment of all moneys so paid, together with interest thereon at the rate of eight per cent per annum, payable semi-annually, this indenture shall be like security, in like manner, and with like effect as for the payment of said note.

And it is hereby further agreed that in case it becomes necessary to commence proceedings to foreclose this mortgage, then the said Iowa-Wisconsin Bridge Company, in addition to the amount of said debt, interest and costs, agrees to pay to the Mortgagee herein named, or the assignee of the Mortgagee herein, a reasonable attorney's fee for collecting the same, which fee shall be included in the judgment in such foreclosure sale.

In Testimony Whereof, the said Mortgagor has caused these presents to be executed in its corporate name by its Vice President and its Treasurer, and its corporate seal to be hereunto affixed this 10th day of March 1931.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By A. B. Wilder,

Its Vice President.

And By Oscar R. Thorson,

Its Treasurer.

In The Presence Of

M. White

Raymond E. Hermeman

Iowa-Wisconsin Bridge  
Co.

Seal

Delaware

[fol. 479] State of Minnesota,

County of Hennepin—ss.:

On this 10th day of March, 1931, before me, a notary public within and for said County, personally appeared A. B. Wilder and Oscar R. Thorson, to me personally known, who, being each by me duly sworn did say that they are respectively the Vice President and Treasurer of the Iowa-Wisconsin Bridge Company, the corporation named in the foregoing instrument, and that the seal affixed to said instrument is the corporate seal of said corporation, and that said instrument was signed and sealed in behalf of said corporation by authority of its Board of Directors, and said A. B. Wilder and Oscar R. Thorson acknowledged said instrument to be the free act and deed of said corporation.

Notarial Seal  
Hennepin Co., Minn.

M. R. JOHNSTONE,  
Notary Public.

My Commission expires August 31, 1935.

The undersigned, The Standard Shares Holding Company, a corporation organized under the laws of the State of Minnesota, does hereby approve of and consent to the foregoing mortgage executed by and between the Iowa-Wisconsin Bridge Company, Mortgagor, and Phoenix Finance System, Inc., Mortgagee, in the sum of \$50,000.00, which said mortgage bears date the 10th day of March, 1931.

Signed this 28th day of April, 1931.

THE STANDARD SHARES  
HOLDING COMPANY.

By John W. Shaffer

Its President.

And By M. C. Lockhart,

Its Secretary.

Standard Shares Holding  
Company  
Minnesota

[fol. 480] The undersigned, John W. Shaffer, does hereby approve of and consent to the foregoing mortgage executed by and between Iowa-Wisconsin Bridge Company, Mortgagor, and Phoenix Finance System, Inc., Mortgagee, in the sum of \$50,000.00, bearing date the 10th day of March 1931; it being specifically understood that the undersigned does not hereby intend to, nor does he, prejudice any right and interest which he has in and to the premises described in said mortgage arising by reason of that certain lease agreement made and signed the 2nd day of December, 1930, between Iowa-Wisconsin Bridge Company as Lessor and the undersigned as Lessee.

Signed this 25th day of April, 1931.

JOHN W. SHAFFER.

Received for Record this 18 day of May A. D. 1939 at  
8:30 o' clock A. M.

MARGUERITE ROGERS.

Register of Deeds.

State of Wisconsin,

Crawford County—ss.:

I, Marguerite Rogers, Register of Deeds in and for said County and State, do hereby certify that I have compared the foregoing and hereunto annexed copy with original Certified copy of Mortgage-Iowa-Wisconsin Bridge Co. to Phoenix Finance System, Inc. Vol. 153, page 293 that it is a correct transcript therefrom and of the whole thereof as the same remains of record in my office.

In Testimony Whereof, I have hereunto set my hand and  
Seal at Prairie du Chien, this 4th day of March,  
A. D. 1940.

MARGUERITE ROGERS.

(Seal)

Register of Deeds.

[fol. 481] State of Wisconsin, to-wit:

I, S. E. Smalley, Circuit Judge of the Fifth Circuit of the State of Wisconsin, and as such, the presiding Judge

of the Circuit Court of Wisconsin in and for Crawford County, do hereby certify that the foregoing record and attestation made by Marguerite Rogers, Registrar of Deeds within the County of Crawford, whose name is thereto subscribed, are in due form, and made by the proper officer. And I further certify that Hubert C. Freeman is the Clerk of the Circuit Court of Wisconsin, Fifth Circuit, in and for Crawford County.

In testimony whereof, I have hereunto set my hand this  
9th day of March, 1940.

S. E. SMALLEY,  
Judge.

State of Wisconsin,  
Crawford County—ss.:

I, Hubert C. Freeman, Clerk of the Circuit Court of the State of Wisconsin, Fifth Circuit, in and for Crawford County, do hereby certify that Hon. S. E. Smalley, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof, and still is Circuit Judge of the State of Wisconsin, Fifth Circuit, and, as such, the presiding Judge of the Circuit Court of said State in and for Crawford County, duly commissioned, qualified and sworn, to all whose acts, as such, full faith and credit are, and ought to be, given, as well in the Courts of justice as elsewhere.

In testimony whereof, I hereto set my hand and affix the  
seal of said Court this 9th day of March A. D. 1940.

(Seal) HUBERT C. FREEMAN,  
Clerk Circuit Court of Wisconsin in  
and for Crawford County.

[fol. 482] State of Wisconsin,  
County of Crawford—ss.:

I, Lester R. Daugherty, County Clerk of Crawford County, do hereby certify that Marguerite Rogers is the duly elected and qualified Register of Deeds in and for Crawford County, Wisconsin.

Given under my hand and official seal at the Court House  
in the city of Prairie du Chien this 9th day of March,  
1940.

(Seal) **LESTER R. DAUGHERTY,**  
County Clerk.

Filed in the District Court March 20, 1940.

[fol. 483] (Exhibit SC-101)

State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing pages contain a true copy of the whole Record and Proceedings in the case there stated as the same now remains in the Superior Court of the said State, at Wilmington.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Seventh day of March, A. D., One thousand nine hundred and forty.

(Seal) **MARTIN G. HANNIGAN,**  
Prothonotary.

State of Delaware, to-wit:—

I, Daniel J. Layton, Chief Justice of the State of Delaware, and as such, the Presiding Judge of the Superior County of the said State, do hereby certify that the foregoing Record and attestation, made by Martin G. Hannigan, Esq., Prothonotary of the said Court, within the County of New Castle, whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form and made by the proper officer.

In testimony whereof I hereunto set my hand this Seventh day of March, A. D., One thousand nine hundred and forty.

Chief Justice.



State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for the County of New Castle, do certify that the Honorable Daniel J. Layton, Esquire, by whom the foregoing attestation was made, and whose name is thereto subscribed, was at the time of making thereof, and still is, Chief Justice of the State of Delaware, and, as such, the Presiding Judge of the Superior Court of the said State, duly commissioned and [fol. 484] sworn, to all whose acts, as such, full faith and credit are, and ought to be, given, as well in Courts of Justice as elsewhere.

In testimony whereof, I hereunto set my hand and affix the seal of the said Court, this Seventh day of March, A. D. One thousand and nine hundred and forty.

MARTIN G. HANNIGAN,

(Seal)

Prothonotary.

[fol. 485] (Request for Issuance of Summons.)

In the Superior Court of the State of Delaware in and for  
New Castle County.

Summons Case.

November Term, A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Please issue Summons Case to the November Term, A. D., 1938.

ARTHUR G. LOGAN,  
MARVEL, MORFORD &  
LOGAN,

Attorneys for Plaintiff.

To Martin G. Hannigan, Esquire, Prothonotary.

Filed Sept. 28, 2:40 P. M. '38 Martin G. Hannigan, Prothonotary.

[fol. 486] (Summons and Sheriff's Return.)

Sum Case

New Castle County—ss.

The State of Delaware,

To the Sheriff of New Castle County—Greeting:

(Seal)

We Command You That you summon Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware late of your County Company so that it be and appear before the Judges of our Superior Court at Wilmington, on Monday, the Seventh day of November next to answer Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware of a plea of trespass on the case, etc.

And have you then there this Writ.

Witness, the Honorable Daniel J. Layton, at Wilmington, the Nineteenth day of September, in the year of our Lord one thousand nine hundred and thirty-eight.

Issued Sep. 29, 1938.

MARTIN G. HANNIGAN,

Pronothary.

[fol. 487]

#2-311 Superior

No. 39 Nov. Term, A. D., 1938

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Sum Case

MM&L, Esqs.

Pro.q

Summoned Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the

State of Delaware by serving personally and delivering a copy of the within writ to Charles Peabbles, Assistant Secretary of Corporation Trust Company resident agent of said Iowa-Wisconsin Bridge Company, a corporation as aforesaid September 30, 1938.

So Ans.

JOHN M. ULMER,  
Sheriff.

Costs &	.75
Mlg.	.10
	—
	.85

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[fol. 488] In the Superior Court of the State of Delaware  
in and for New Castle County.

Summons Case

November Term, A. D. 1938

M. M. & L. Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

39 vs.

W. & G. Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Oct. 31, 1938. Affidavit of Demand filed with copy.

Nov. 7, 1938. Ward & Gray enter appearance for deft.

Nov. 10, 1938. By agreement of counsel, time for filing affidavit of defense extended to Nov. 17, 1938.

Nov. 15, 1938. Affidavit of Defense filed with copy.

Dec. 14, 1938. Narr Filed with copy. Rule pleas by first general Rule day in January.

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[fol. 489] (Affidavit of Demand.)

In the Superior Court of the State of Delaware in and for  
New Castle County

Summons Case

November Term, A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

State of Florida,  
County of Pinellas—ss.:

Before Me, Josie Lee Bates, A notary Public of the State of Florida for the County aforesaid, personally comes M. K. Thompson, Treasurer of Phoenix Finance Corporation, the plaintiff above named, who, being by me duly sworn according to law deposes and says that she is the treasurer of the plaintiff, Phoenix Finance Corporation, that annexed hereto are true and correct copies of the promissory notes sued upon in this action, that the sum demanded of the said defendant is the sum of \$5,125 with lawful interest on the sum of \$2,000, being the amount due on one of said promissory notes, from the 15th day of December, 1932, and with lawful interest on the sum of \$3,125, being the amount due on the other of said promissory notes, from the 20th day of January, A. D. 1933, and said deponent further says that she verily believes that the same [fol. 490] is justly and truly due from the said defendant to the said plaintiff.

M. K. THOMPSON.

Sworn to and subscribed before me this 26th day of October, A. D. 1938.

JOSIE LEE BATES,  
Notary Public, State of Florida at Large.

My commission expires October 4, 1939.

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[fol 491] \$3,125.00 Des Moines, Iowa, Jan. 20, 1933....

On the 20 day of July 1933 for value received We promise to pay to the order of Phoenix Finance Corporation the sum of Thirty-one hundred twenty five and no/100 Dollars Payable at 316 12th Street, Des Moines, Iowa, with interest at 8 per cent per annum from date. Interest payable semi-annually.

Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00 and ..... do hereby severally waive demand of payment, protest, and notice of protest of this note and consent that time of payment may be extended without notice. A failure to pay interest when due, shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Oscar R. Thorson, Secy-Treas.

P. O. Address .....

No. ....

[fol. 492] \$\*\*2,000.00\*\*

Des Moines, Iowa, December 15, 1932.

On the 15 day of June, 1933 XXXXXXXX for value received We promise to pay to the order of Phoenix Finance Corporation the sum of Two Thousand and No/100 Dollars Payable at 316 12th Street, Des Moines, Iowa with interest at 8 per cent. per annum from date. Interest payable semi-annually.

Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00 and we do hereby severally waive demand of payment, protest, and notice of protest of this note and consent that time of payment may be extended

without notice. A failure to pay interest when due, shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Oscar R. Thorson,  
Secretary-Treasurer.

P. O. Address .....

No. ....

[fol. 493] (Affidavit of Defense.)

In the Superior Court of the State of Delaware in and for  
New Castle County.

Summons Case.

November Term A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

State of Iowa,  
Cerro Gordo County—ss.

Be It Remembered That on this 9th day of November A. D. 1938, before me, F. T. Barrett, a Notary Public of the State of Iowa, in and for Cerro Gordo County, personally comes Irene M. Bell, Secretary and Treasurer of the Iowa-Wisconsin Bridge Company, the defendant above named, who being by me duly qualified according to law, deposes and says that she is the Secretary and Treasurer of the Iowa-Wisconsin Bridge Company, defendant in the above named suit, and that she verily believes that there is a legal defense to the whole of the cause of action in said suit, the nature and character of which defense is fraud, want of consideration, former adjudication, want of lawful authorized execution and delivery, and offset.



That John A. Thompson was president of and interested in and with his wife, M. K. Thompson and associates A. B. Wilder and Emery H. English, controlled the Phoenix Finance System Incorporated and other affiliated companies.

That M. White was John A. Thompson's secretary and an officer of the Phoenix Finance System Incorporated.

[fol. 494] That Thompson & Company was a wholly owned subsidiary of the Phoenix Finance System Incorporated and was but an agency adjunct and instrumentality of the Phoenix Finance System, Inc. and used as such.

That in October and November 1930 through negotiations with John W. Shaffer and Vernon W. O'Connor, John A. Thompson became President of and acquired control of the Iowa-Wisconsin Bridge Company (hereinafter called the Bridge Company). At about the same time the number of directors of the Bridge Company was increased and Thompson together with other directors of the Phoenix Finance System, Inc. became directors of the Bridge Company. From that time on, Thompson controlled the Bridge Company.

On November 26, 1930, a stated settlement as of October 31, 1930, was made between the Standard Shares Holding Company and the Bridge Company, under which there were delivered to the Bridge Company by its trustees, liquid assets, such as cash, bills and accounts receivable, stocks and bonds, inventoried at \$90,235.68; construction accounts representing amounts which had been paid for construction to date aggregating \$183,496.90, and equipment, etc., amounting to \$1,986., and commission and organization and expense accounts amounting to \$75,231.08, making a total of \$350,950., and there had been sold by said trustee for the account of the Bridge Company stock of the latter at \$100. per share, amounting to \$350,950. The settlement also provided for the return of all stock of the Bridge Company held by said trustee except 1500 shares of Class B stock, which were returned to the Bridge Company in consideration of a so-called management contract, the terms of which are immaterial in this litigation. On the \$90,935. of liquid assets there was later realized over \$79,000. in cash [fol. 495] and the Bridge Company had treasury stock in the amount of \$390,050. to build its superstructure and com-

plete its bridge. The substructure was practically complete and the sub-contractor thereof had been paid within \$8200. of the total cost and the grading was well under way.

Under date of November 11, 1930, a contract for the completion of the bridge was entered into between the Bridge Company, acting through John A. Thompson as president and John W. Shaffer & Company, which included erection of super-structure of the bridge, erection of piles and trestles over certain sloughs, erection of toll house, etc., and surfacing of roadway and whereby the Bridge Company agreed to and did pay \$10,000. in cash and agreed to and did deliver 3200 shares of its capital stock at a fixed price of \$320,000., to John W. Shaffer & Company, and Shaffer & Company in said contract agreed to furnish a surety bond to insure the obligations of said Shaffer & Company. Extras were required to be ordered in writing. John W. Shaffer & Company sublet the contract for steel to McClintic-Marshall Company and the construction work to the Industrial Contracting Company.

In November, 1930, immediately after the issuance of said 3200 shares of stock to Shaffer & Company, the latter company sold said stock to Thompson & Company and received the promissory note of Thompson & Company for \$224,000. therefor,

That about the first of November, 1930, 140 shares of Bridge Company stock were issued to Phoenix Finance System, Inc., and the value thereof fixed at \$100. per share, to-wit: \$14,000. That upon the issuance of such stock Phoenix Finance System, Inc., became indebted to the Bridge Company for said amount. That such amount has not been paid. That the Phoenix Finance System, Inc., disposed of such stock to the public. That thereafter John A. Thompson, then president of the Bridge Company, dominated and controlling the Bridge Company, and his associates caused the execution of a purported guaranty contract providing for the turning over to the Phoenix Finance System, Inc., such stock without payment therefor. That in such transaction John A. Thompson acted in a dual capacity as president of the Bridge Company and as president of the Phoenix Finance System, Inc., and acted in the interests of himself and his affiliated companies as against

the interests of the Bridge Company and dealt with himself in such transaction. That the Bridge Company has not received consideration for the aforesaid stock and there is due the Bridge Company on account thereof the sum of \$14,000. with interest.

That John A. Thompson on November 5, 1930, purchased 65 shares of Bridge Company stock from the Bridge Company at \$100. per share, and on the same day A. B. Wilder, also a director of the Bridge Company, purchased 10 shares of Bridge Company stock from the Bridge Company at \$100. per share. That on the 31st day of December, 1930, Thompson & Company purchased 170 shares of Bridge Company stock from the Bridge Company at \$100. per share. That subsequent to such purchase of stock by John A. Thompson and A. B. Wilder on the 31st day of December, 1930, the said John A. Thompson, through his dominant control of the Bridge Company, credited to Thompson & Company on the books of the Bridge Company 15% commission on all of the aforesaid stock in the sum of \$3,675. That it was the duty of John A. Thompson and A. B. Wilder as directors of the Bridge Company to assist in selling stock owned by the Bridge Company. That in the selling of said stock no exceptional or extraordinary services were rendered and they were not entitled to credit for said commissions.

[fol. 497] A stockholders' meeting of the Bridge Company was held March 10, 1931, which was controlled by the stock of Thompson & Company and John A. Thompson, 1310 shares and proxies held by Thompson 375 shares, a total of 1685 shares out of 2586 shares represented, at which meeting a board of directors was elected controlled by said Thompson. Following said stockholders' meeting, a directors' meeting was held attended by only Thompson directors, viz., V. W. O'Connor, John A. Thompson, A. B. Wilder and Oscar R. Thorson. At this meeting, there was passed a purported resolution providing for the issuance of a \$50,000. mortgage to the Phoenix Finance System, Inc., on the properties of the Iowa-Wisconsin Bridge Company which resolution contained the false and fraudulent recital that funds received from sale of stock had been inadequate to properly finance the rapid completion of the bridge; whereas, the Bridge Company then had nothing to

do with the sale of stock and it had delivered to J. W. Shaffer & Company \$320,000. of its stock and \$10,000. in cash for the completion of the bridge. That pursuant to such resolution a mortgage was executed to Phoenix Finance System, Inc., for \$50,000. signed on behalf of the Bridge Company by A. B. Wilder, who was then also an officer and director of said mortgage company. That in truth and in fact no indebtedness of said Bridge Company to the Phoenix Finance System, Inc., existed and the Bridge Company received no consideration for the execution of said mortgage; that the same was and is wholly without consideration, fraudulent and void. At said time said Thompson caused entries to be made on the books of said Bridge Company purporting to show the receipt of \$50,000. in cash, whereas, in truth and in fact, said amount and no part thereof was received by the Bridge Company.

[fol. 498] That about the 11th day of March, 1931, John A. Thompson and his affiliated companies, through the dominant control of the Iowa-Wisconsin Bridge Company, caused a payment of \$3,000. to be made from the funds of the Bridge Company to A. B. Wilder through the medium of checks issued to John W. Shaffer and immediately endorsed and delivered to A. B. Wilder, and \$1000. thereof was then turned over to Thompson & Company by said Wilder. That the said Wilder was then an officer and director of the Phoenix Finance System, Inc., and also a director of the Bridge Company. That no resolution was passed by the stockholders or directors of the Bridge Company authorizing such payments to said Wilder nor was there any action taken or resolution passed by the Bridge Company providing for the payment of any amount to said Wilder for services nor had there been nor were there any exceptional or extraordinary services rendered by said Wilder to the Bridge Company. That no consideration passed to the Bridge Company for such sums. That the said Thompson and his affiliated companies controlling the Bridge Company, so manipulated its books as to cause fictitious entries to be made thereon as though said sums were paid on approaches, when in fact no work was done on approaches for which said sums or any part thereof was a proper payment. That payment of said amounts was a misappropriation of the Bridge Company's funds.

That on the 1st day of November, 1931, John A. Thompson and his affiliated companies through the exercise of dominant control of the Bridge Company turned over to the Bridge Company \$5,410.85 of notes taken by Thompson & Company in the sales of Bridge Company stock owned by Thompson & Company and with which Thompson & Company held as collateral such stock sold by it. That said Thompson & Company took or received from the Bridge [fol. 499] Company \$5,410.85 for such notes. That in such transaction John A. Thompson acted in a dual capacity as president of the Bridge Company and as president of the Phoenix Finance System, Inc., and controlling its subsidiary Thompson & Company and acted in the interests of himself and his affiliated companies against the interests of the Bridge Company and dealt with himself in such transaction. The Bridge Company at the time of such transaction did not have any surplus from which it could purchase any of its stock.

That notwithstanding the alleged mortgage Thompson & Company continued to sell its bridge stock through its agents at \$100. per share, on the representation that the Bridge Company had no funded debt, and concealed the fact of the existence of said mortgage from stockholders and directors of the Bridge Company.

That on August 6, 1931, John W. Shaffer & Company owed Industrial Contracting Company \$10,000.; McClintic-Marshall Company \$11,262.71 and to Kramer & Hogg an amount, then in dispute; Shaffer & Company also claimed to be entitled to payment for certain extra steel; certain extra labor and material, and commissions. There were also other matters in dispute between the Bridge Company and Shaffer & Company with reference to the bridge contracts. To make a complete settlement, a stated settlement contract was made August 6, 1931 between the Bridge Company as party of the first part, and John W. Shaffer, V. W. O'Connor, John W. Shaffer & Co., and Standard Shares Holding Company, as parties of the second part, which was executed on behalf of the Bridge Company, by J. A. Thompson as president and which provided;

(a) That the Bridge Company transfer to the other parties to the contract 120 shares of its common stock and



80 shares of its preferred stock and certain other securities which were of the value of \$2,475., and pay to Kramer & [fol. 500] Hogg the balance due them.

(b) That the second parties (Shaffer, O'Connor, Standard Shares Holding Company and Shaffer & Company) accept such consideration "as full and complete settlement of all sums due them and/or any of them and for full satisfaction and stated settlement of any and all claims of all kinds whatsoever arising out of any contract or other relations between the parties hereto and/or pertaining in any way to said toll bridge and second parties separately and jointly hereby release said Iowa-Wisconsin Bridge Company fully and completely. Second parties hereby specifically acknowledge receipt of full payment for all engineering, designing and building of said bridge, and for all material, services and all other things pertaining to said bridge."

The Bridge Company pursuant to this contract delivered 200 shares of its stock of the value of \$20,000. and other securities of the value of \$2,475.

That at about the same time John W. Shaffer agreed to and did turn over to Thompson of Thompson & Company, and president of the Phoenix Finance System, Inc., \$10,000, of the Bridge Company stock (100 shares received by Shaffer) and Thompson & Company agreed to pay \$10,000 owing to the Industrial Contracting Company and \$11,262.71 owing to the McClintic-Marshall Co. Neither the Industrial Contracting Company nor the McClintic-Marshall Company had any contract with the Bridge Company, nor was the Bridge Company indebted to them in any amount.

On September 24, 1931, the Industrial Contracting Company drew a sight draft on Phoenix Finance System, Inc., for the balance of \$10,000 due them which Thompson & Company had agreed to pay and for which the Bridge Company was not liable. As a part of the fraudulent scheme and plan, leading up to the issuance of the bonds [fol. 501] hereinafter mentioned, said John A. Thompson caused entries and deposits and withdrawals on the Bridge Company's records to be made, purporting to show that



Phoenix Finance System, Inc., had advanced to the Bridge Company the sum of \$10,000, and that the Bridge Company had made payment on said sight draft, and pretended thereby to show an indebtedness of \$10,000 due from the Bridge Company to Phoenix Finance System, Inc., whereas, in truth and in fact, the said amount was an obligation of Thompson & Company and not of the Bridge Company, and nothing was due from the Bridge Company to Phoenix Finance System, Inc. on account thereof.

That on November 11, 1931, a meeting of the directors of the Bridge Company was held at which a majority present were dominated by John A. Thompson, as president. At this meeting it was represented by John A. Thompson that there was due the Phoenix Finance Corporation \$54,000. on the purported mortgage of March 10, 1931, and \$10,000. for money advanced Industrial Contracting Company; and that there was other indebtedness including a claim of McClintic-Marshall Company for \$12,000. and further obligations aggregating \$40,000. That at said meeting resolutions were adopted providing for a bond issue of \$200,000.; for a stockholders' meeting to consider the bond issue; for the delivery of bonds to pay the \$50,000. mortgage; and for the payment of other alleged claims.

On the same date, a letter prepared at the dictation of John A. Thompson, and signed by Oscar R. Therson, as secretary-treasurer, of the Bridge Company, under his direction was sent to the stockholders of said Bridge Company. In said letter it was falsely and fraudulently represented to the stockholders of the Bridge Company for the purpose of inducing said stockholders to approve the proposed bond issue of \$200,000., and to induce them to [fol. 502] forward proxies to said Thompson and his associates, as follows:

(a) "That in October, 1930, negotiations were opened with Phoenix Finance System, Inc., to lend its aid in arranging for the financing of the completion of the bridge and to save the project from absolute failure.

(b) That there was an understanding that the Phoenix Finance would be repaid by the Bridge Company on demand for any such advances that might be required to be

made by it temporarily in order to fulfill the guarantee and to permit the continuation of work on the bridge.

(c) That sale of stock to the public showing no improvement and in order that the work on the bridge might not be delayed, Phoenix Finance System, Inc., made substantial advances.

(d) That construction of the bridge went forward without delay and the cash required for material and labor was advanced regularly by the Phoenix Finance Company.

(e) That there had been advanced by the Phoenix Finance System, Inc., to the Bridge Company in the payment of bills for labor and material to complete the bridge approximately \$70,000., \$50,000. of which is secured by a mortgage which was due December 10, 1931.

(f) In addition to the sum of \$70,000. which has been advanced by the Phoenix Finance System, Inc., there will be immediately required the further sum of approximately \$25,000. to complete payment of outstanding obligations.

(g) The board of directors was confronted with the problem of raising additional funds with which to satisfy the claims of Kramer & Hogg and McClintic-Marshall and Company in order to prevent threatened liens and litigations to collect these amounts.

[fol. 503] (h) There was never intended that this cash advanced by Phoenix Finance System, Inc., to the Bridge Company should be of a permanent nature and it must be repaid.

That the aforesaid representations were misleading, false and fraudulent.

That following the aforesaid letter, notice of a proposed stockholders' meeting for December 22, 1931, with form of proxy running to Emory H. English, Oscar R. Thorson and J. H. Thompson enclosed was sent to Class B voting stockholders and the fraudulent statements contained in the letter of November 11, 1931. were not corrected, nor was any true information given with respect thereto. That said notice called for a special meeting of Class B voting common stock, to consider and authorize directors to borrow, not to exceed \$200,000.; to authorize the execution of

mortgage bonds, not to exceed that amount, and to provide the terms and conditions under which such bonds should be issued; to authorize the directors to convey to a named trustee by mortgage deed of trust all of the property and assets of the company to secure the payment of the principal and interest of such bonds; to authorize the directors to sell, pledge or otherwise dispose of such bonds and to apply the proceeds thereof to such corporate purposes as the board might from time to time determine. In response to such letter of November 11, 1931, and said notice of November 20, 1931, the proxies of stockholders were procured reading to Oscar R. Thorson, Emory H. English and J. H. Thompson, Emory R. English and Oscar R. Thorson being the representatives of John A. Thompson and these proxies were voted by Oscar R. Thorson in unison with the stock and proxies held by John A. Thompson, controlled and dominated the stockholders' meeting held on December 22, 1931, as a part of the scheme, plan and conspiracy. At this meeting Oscar R. Thorson voted by [fol. 504] proxy 1011 shares and in person 18 shares and John A. Thompson by proxy 505 shares and in person 137 shares and Mrs. John A. Thompson in person 20 shares, M. White 18 shares. The shares thus voted by Thorson, John A. Thompson, M. K. Thompson and M. White being 1709 shares, which were more than a majority of the 2608 shares represented at the meeting. That at said meeting there was adopted a resolution authorizing the issuance of first mortgage bonds in the aggregate principal sum of \$200,000, and the conveyance by mortgage deed of trust of all of the property of the Bridge Company to secure the payment of such bonds. The resolution relating to the bond issue was voted and carried by the votes of said John A. Thompson and his controlled associates Oscar R. Thorson, M. White and his wife M. K. Thompson. Such resolution was presented at said stockholders meeting with false preambles and representations as reasons or excuse for voting of the bond issue as follows:

(a) "Whereas it was originally contemplated that the funds necessary to construct the Blackhawk Bridge would be acquired through the sale of stock and whereas a substantial part of the funds were acquired in that manner, but due to a change in general economic conditions it de-

veloped that it was impossible to realize sufficient funds from that source as rapidly as the same were required to complete the bridge project economically.

(b) "Whereas, it was necessary for the company to borrow funds to expedite the completion of said bridge and avoid disaster and whereas the amount of steel required and cost of building the bridge was greatly in excess of the cash originally estimated.

(c) "Whereas, there now remains unsold capital stock of the company in the approximate amount of \$120,000.

[fol. 505] (d) "Whereas, it now becomes necessary for the company to raise sufficient funds with which to pay loans made to the company by the Phoenix Finance System, Inc., a greater portion of which is secured by mortgage on the property of the company and which is now past due.

(e) "Whereas, the company for these and other corporate purposes will be presently required to borrow not to exceed \$100,000, to discharge these obligations and others which it is contemplated will presently arise.

(f) "Whereas, it is anticipated that additional funds, not to exceed \$100,000 may from time to time be required to discharge present or future obligations of the company to provide for the payment of pavement and improvement of dike and to care for flood conditions and other emergencies.

(g) "Whereas, the company finds itself unable to acquire funds for these purposes except through the creation and issuance of bonds secured by mortgage deed of trust covering the assets, property and income of the property, and whereas the interests of the stockholders would be jeopardized unless such funds or a part thereof are made available within a reasonable time."

That the aforesaid preamble, statements and representations were misleading, false and fraudulent and made with intent to deceive and defraud the Bridge Company and its stockholders. That said meeting was wholly con-

trolled and dominated by John A. Thompson and his associates, officers and directors of the Phoenix Finance System, Inc. That other stockholders, relying on the aforesaid false and fraudulent statements contained in said letters and notice and believing the same to be true and knowing not to the contrary sent a proxy in the form afore-[fol. 506] said. That independent stockholders at said meeting relying on the aforesaid representations and believing the same to be true and not knowing the contrary voted for such resolutions, and independent and uncontrolled stockholders who voted for such resolutions did so on account of being deceived by the aforesaid false representations.

That following such special meeting, a directors' meeting was held, dominated and controlled by John A. Thompson, at which meeting a purported resolution was passed with respect to the \$50,000. mortgage, and with reference to the issuance of the bonds therefor; that at said meeting it was represented and claimed by John A. Thompson that it was a valid and bona fide mortgage, and that said John A. Thompson did not disclose the fact that the alleged mortgage was not based on a proper consideration, and that the same was fraudulent; and that such independent directors as were present, voting for such resolution on the said representations of said John Thompson, believed the same to be true, knowing nothing to the contrary and were deceived thereby. >

On January 5, 1932, a directors' meeting of the Bridge Company was held at which there were present four Thompson controlled directors, Emory H. English, Oscar R. Thorson, A. B. Wilder and M. White and no others, at which meeting these four Thompson Phoenix Finance System, Inc., directors passed a resolution to purchase from the Phoenix Finance System, Inc., 517 shares of Class A. preferred stock for \$51,700., with interest at the rate of 6% from January 1, 1931, and to deliver Class B bonds of the Bridge Company in such face amount as would on the basis of 8% yield \$51,700, with interest thereon which amounted to \$60,500. of bonds. That neither on the 5th [fol. 507] day of January, 1932, nor at any time thereafter did the Iowa-Wisconsin Bridge Company have any surplus with which to make a repurchase of its own stock.



That while the Articles of Incorporation of the Bridge Company contain the provisions set forth in paragraph seven of the interveners' petition of intervention, and paragraph eleven of these findings of fact, the Bridge Company, through the influence of the said Thompson and his associates, caused \$60,500. of said bonds to be issued to the said Thompson or his owned and controlled institutions. When that was done, there was outstanding other Class A stock held by other stockholders who were not given the permission or opportunity by the Bridge Company, as was the said Thompson and his affiliated companies, to surrender such Class A. Stock and receive bonds, as did the said Thompson and his institutions. That no notice of intention of the corporation to redeem said Class A shares was mailed or given to holders of said stock, as required by said paragraph seven of the Articles of Incorporation, except to the said Thompson and his controlled companies. That in other words, all of the said Class A stock was not purchased by the Bridge Company at said time through the issuance of the said bonds or otherwise, nor was a portion of the said Class A stock redeemed proportionately, as provided by the Articles of Incorporation set forth in paragraph seven of the petition of intervention and paragraph 11 of these findings. And at said time the said Class A stock was thus surrendered by the said Thompson without notice to the other stockholders similarly situated, and that such transaction took place without a legal authorizing vote, on the part of the stockholders or directors of the Bridge Company. That so far as Thompson and his associates were concerned, they were voting under the influence of Thompson, but so far as independent stock-[fol. 508] holders and directors were concerned, they did not know the true facts when they voted for the pretended authorizing resolution.

That when the said Thompson and his companies exchanged the said Class A stock for the said bonds in the amount of approximately \$60,500, such action caused an impairment of the capital of the corporation in violation of said Delaware statute.

That the action of the said Thompson, in promoting said exchange of Class A stock for bonds, was fraudulent and for the purpose of conferring on himself a preference over



other holders of Class A Stock. That by thus conspiring and acting fraudulently the said Thompson did acquire a preference over other holders of such Class A stock.

That on March 7, 1932, a meeting of the board of directors of the Bridge Company was held at which were present Emory H. English, John A. Thompson, M. K. Thompson, Oscar R. Thorson, H. T. Wagner and A. B. Wilder, all Thompson and Phoenix Finance System, Inc., controlled directors, at which a purported resolution was adopted for the delivery of \$97,000. of Class A bonds of the Bridge Company to the Phoenix Finance System, Inc. for the purported \$50,000. mortgage and interest thereon and for \$10,000. to the Industrial Contracting Company, \$9,000. to Kramer & Hogg and \$11,262.71 to McClintic-Marshall Company, with interest on such items amounting to \$83,811.29 and with discount on the bonds of \$12,727.31, making a purported total of \$96,538.58 and a purported balance of \$461.42 being charged to Phoenix Finance System, Inc., on the books of the Bridge Company. making a total of \$97,000.

The aforesaid \$10,000. to the Industrial Contracting Company was neither due from nor paid by the Bridge Company as aforesaid and the Bridge Company did not owe [fol. 509] the \$11,262.71 to McClintic-Marshall Company. That said two items were items that had been fully covered and disposed of by the Bridge Company in its settlement with John W. Shaffer & Co. and were items which Thompson & Company, subsidiary of Phoenix Finance System, Inc., had undertaken to pay. That as a part of the scheme, plan and conspiracy leading up to the issuance of said bonds hereinafter mentioned, the said Thompson paid the balance of \$11,262.71 to McClintic-Marshall Company and as a form and pretense the said John A. Thompson, dominating and controlling the Bridge Company in its acts, in making payment thereof for the Phoenix Finance System, Inc., as aforesaid, attempted to carry out such transaction as though he was making payment thereof for the Bridge Company and caused false entries to be made on the books of the Bridge Company as though said approximate amount had been advanced by the Phoenix Finance System, Inc., to the Bridge Company and the item paid by the Bridge

Company, when in fact the Bridge Company did not owe said item.

That on July 7, 1933, a meeting of the board of directors of the Bridge Company was held at which there were present John A. Thompson, Emory H. English, Oscar R. Thorson, H. T. Wagner, A. B. Wilder, M. K. Thompson and G. W. Huntley, all but one of the members present, G. W. Huntley, being Thompson-Phoenix Finance Corporation controlled directors. At this meeting vice-president Emory H. English and Secretary Thorson reported a purported indebtedness to the Phoenix Finance Corporation of \$12,110.19 on open account and \$5,625. on notes, \$9,806.10 of said \$12,110.19 being purported interest furnished by Phoenix Finance Corporation on the aforesaid fraudulent bonds held by the Phoenix, which were known to the officers of the Phoenix Finance Corporation to be fraudulent, and [fol. 510] \$1505.75 being charged to the Bridge Company for Phoenix Finance Corporation officers and employes, and an item of \$650. which was merely a journal entry and which neither the Bridge Company gained nor lost. During the period the officers of the Phoenix thus purportedly charged the Bridge Company for salaries of the Phoenix Finance System, Inc. officers and employes, the Bridge Company was paying for its own toll-keepers and was paying Thorson \$400. per month as Secretary-Treasurer to take care of its accounts which did not require much book-keeping and there was no occasion for charging the Bridge Company with the salaries of the Phoenix Finance System, Inc. officers and employes, because it had ample help of its own.

On motion of Wagner, seconded by Wilder, a resolution was adopted through the Thompson-Phoenix Finance Corporation controlled directors directing the execution of a demand note to the Phoenix for \$12,110.19, to cover the purported items contained in said open account and instructing the treasurer to pledge \$21,100. of the Class B Bridge Company bonds as collateral to this note and to two other purported notes, which latter notes are the ones set up in plaintiff's demand, one for \$2,000. and one for \$3,125., hereinafter further referred to.

At the time of the purported payment of interest on the purported bonds through an alleged loan of the Phoenix

Finance Corporation to the Bridge Company, John A. Thompson, Emory H. English and A. B. Wilder were directors and officers of the Phoenix Finance Corporation, and were also officers and directors of the Bridge Company and controlled its accounts and the debits and credits placed on the books of the Bridge Company, the actual entries being made by M. Graney, an employee and assistant secretary [fol. 511] of the Phoenix Finance Corporation. John A. Thompson and Emory H. English, to carry out a purported transaction as though the payment of interest were made by the Bridge Company, on the 7th day of February, 1933, made a deposit for the Phoenix Finance Corporation to the account of the Bridge Company in the sum of \$6,896. and on the same date they drew three checks to the Bechtel Trust Co., one No. 189, for \$6,480. payment of interest; one No. 190 for \$15.00 payment of Government tax, and one No. 191 for \$401.00 marked accounts payable, representing the charge of the Bechtel Trust Company, making the aggregate of \$6,896. These checks on the part of the Bridge Company were all signed by M. Graney, employee of the Phoenix Finance Corporation. A check for \$6,480. representing interest, was thereafter remitted to Phoenix Finance Corporation they being the holders of all the bonds on which interest was paid. On the 10th day of February, 1933, though the Bridge Company was paying interest on the bonds, the said Thompson and Emory H. English deposited to the account of the Bridge Company, by the Phoenix Finance Corporation, \$2,910.00. At the same time a check was written on the account of the Bridge Company in the Iowa-Des Moines National Bank, No. 193, for \$2,910.00 to Bechtel Trust Company, being dated February 9th, 1933, payment of interest due January 1st, 1933, on Class A bonds held by Phoenix Finance Corporation. This check was also signed by M. Graney.

The purported interest payment on bonds was a mere manipulation of Thompson and officers and employees of the Phoenix Finance Corporation while controlling the Bridge Company and its books and accounts for the purpose of making it appear as though the Bridge Company paid interest on the fraudulent bonds and with the evident [fol. 512] purpose of attempting to create a supposed waiver in favor of the Phoenix Finance Corporation of the

fraudulent character of the bonds, or an estoppel, to the detriment of the Bridge Company.

Then there is an item of \$109.86, being for claimed balance on the invalid and fraudulent exchange of 517 shares of stock for bonds.

That none of the aforesaid claims were valid claims. That at the time of the purported and pretended execution of each of the two notes set forth in plaintiff's demand, John A. Thompson—Phoenix Finance Corporation controlled and dominated the Iowa-Wisconsin Bridge Co., its officers and directors, and said John A. Thompson at said time was president of the Iowa-Wisconsin Bridge Company, and of the Phoenix Finance Corporation, and that both he and other directors of the Phoenix Finance Corporation, who were also directors of the Bridge Company, were acting in a dual capacity against the interests of the Bridge Company when they caused the execution of said notes if said notes were executed. At the dates of said pretended notes and their claimed execution, the Phoenix Finance Corporation was indebted to the Bridge Company in far greater amount than the amount of said notes. That at that time it was indebted to the Bridge Company in the sum of \$3,000.00, for checks of the Bridge Company of that amount given to A. B. Wilder at the time of the execution of the fraudulent \$50,000.00 mortgage, without consideration, which \$3,000.00 had not been repaid to the Bridge Company. That the conspirators, John A. Thompson, Phoenix Finance Corporation, and Thompson & Company, were jointly and severally liable therefor, and said notes were offset by the \$3,000.00 thus wrongfully appropriated from the Bridge Company, and disbursed, \$2,000.00 to A. B. Wilder, and \$1,000.00 check to Thompson & Company, and were further offset by the fact that the Phoenix Finance System, Inc., and its successor, the Phoenix Finance Corporation, also owed the Bridge Company \$14,000.00, with interest thereon from November, 1930, for Bridge Company stock which it had received fraudulently without consideration, and charged to promotion, through the dominant control of John A. Thompson, and offset by other items due the Bridge Company from the Phoenix Finance Corporation. That at the date of

said purported notes mentioned in plaintiff's demand, the Phoenix Finance Corporation was indebted to the Bridge Company in a far greater amount than the amount of said purported notes, and if at that time the Phoenix Finance Corporation made any payment to or put any funds into the account of the Bridge Company, it was merely a partial payment on what was due the Bridge Company from the Phoenix Finance Corporation, and did not furnish any basis or consideration for the execution of said purported notes, and said notes are without consideration, which fact was well known to the said John A. Thompson and the Phoenix Finance Corporation; that said purported notes are not under seal, and that said notes were never lawfully executed and delivered.

That all of the aforesaid acts and transactions were part and parcel of a plan, scheme and conspiracy on the part of the said John A. Thompson, and Phoenix Finance Corporation, and its predecessor and associates, and done with the fraudulent intent and purpose of cheating and defrauding the Bridge Company and its stockholders out of its property, and to acquire the ownership of said Bridge Company's property to the exclusion of the Bridge Company and its stockholders; and as a part of said fraudulent scheme and plan caused the bonds aforesaid to be issued and trust deed purported to secure the same to be executed without lawful consideration to the Bridge Company.

[fol. 514] That the Phoenix Finance Corporation, at the time it was organized, was officered and controlled by the same officers as Phoenix Finance System, Inc., and took over the succession both of assets and liabilities, with full notice of the facts and circumstances surrounding the bond issue in controversy in this case, and assumed the entire fruits and activities of its predecessor, so far as concerns this case, and proceeded to carry on with the same notice and purpose, adopting all of the plans and results of its predecessor.

That in the aforesaid trust deed securing the aforesaid bonds, Beehtel Trust Company, an Iowa corporation (now First Trust & Savings Bank), and A. H. Schubert, a citizen of Wisconsin, were named as trustees, and on the 28th of August, 1933, filed a bill of foreclosure at the instance



of the Phoenix Finance Corporation and with an arrangement that said suit would be instituted and prosecuted and the Phoenix Finance Corporation would save and keep harmless such trustees from all costs, expenses and liabilities, including attorneys' fees connected with the case. That said suit was filed in the United States District Court for the Northern District of Iowa, in the name of Bechtel Trust Company, an Iowa corporation (now First Trust & Savings Bank) and A. H. Schubert, a citizen of Wisconsin, as trustees complainants, vs. Iowa-Wisconsin Bridge Company, a Delaware corporation, defendant, for the foreclosure of the aforesaid trust deed and bonds; that the aforesaid trust deed securing the aforesaid bond issue of \$2000,000.00, purportedly covered all of the property of the Iowa-Wisconsin Bridge Company.

[fol. 515] The trust deed, which is in the ordinary form of a mortgage trust deed securing a bond issue, made it the duty of the Bridge Company to pay taxes on the mortgaged property, to pay interest on the bonds, and to pay the bonds as they matured. In case of default for a period of sixty (60) days it was provided that the trustees may, and upon the written request of the holders of twenty-five per cent of the bonds then in default, shall declare the principal of all the bonds due, and "shall proceed to protect and enforce their rights and the rights of the bondholders, under this Indenture by a suit or suits in equity, or at law \* \* \* by \* \* \* foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy as the trustees \* \* \* shall deem most effectual."

It is further provided in the trust deed that no holder of any bond or coupon secured hereby shall have any right to institute any suit, action, or proceeding in equity or law, for the foreclosure of this Indenture \* \* or for any other remedy hereunder, except in case the trustees after notice and demand refuse to act. The said suit was commenced by the trustees at the request of the Phoenix Finance Corporation as the holder of more than twenty-five percent of the bonds, and was prosecuted by attorneys selected by it. The bill alleged jurisdiction based upon diversity of citizenship, the authority of the trustees to sue under the terms of the trust deed, default, and accelera-



tion of due date, and the prayer was for foreclosure for all of the bonds, including those issued on or as collateral for the aforesaid notes mentioned in plaintiff's demand. The prayer was:

"That an account be taken of the bonds and interest coupons secured by said mortgage deed of trust, and the amount due on the said bonds for principal and interest or otherwise, \* \* \* that said Iowa-Wisconsin Bridge Company be decreed to pay the amount found due \* \* within a short day to be fixed by the court, and that in default of said payment the mortgaged property be sold to satisfy [fol. 516] the amount found due and costs, and in case of such sale the defendant, Iowa-Wisconsin Bridge Company, and all persons claiming by, through or under it, may be forever barred or foreclosed of all equity of redemption," and prayed the appointment of a receiver, etc. A copy of the trust deed was attached to the bill, in the usual form.

The defendant bridge company filed answer September 25, 1933, admitting the jurisdiction of the court, the execution of the trust deed and the issuance of the bonds; denying complainants' right to the appointment of a receiver; alleging that a part or all of the bonds secured by the trust deed were invalid; and praying the protection of the court. On September 26, 1933, the court appointed a receiver of all of the property of the Bridge Company with direction to take immediate possession and to operate its business.

On December 5, 1933, by leave of court, Fayette D. Kendrick, a stockholder of the Bridge Company and citizen of Minnesota, intervened on behalf of defendant, himself and all other stockholders similarly situated, praying that the complainants' bill be dismissed, the bonds cancelled and the deed of trust set aside. He alleged that all of the bonds and the mortgage deed of trust were issued as a part of a fraudulent scheme, plan and conspiracy, with intent to cheat and defraud the Bridge Company and its stockholders out of their property. That the bonds and mortgage were fraudulent, without consideration, invalid and void, and were procured by John A. Thompson and his associated in conspiracy, officers and directors of the Phoenix Finance System, Inc., predecessor of petitioner,

by dominating and controlling the Bridge Company and by acting as officers and directors of the latter. That none [fol. 517] of the bonds had passed to innocent purchasers for value without notice. That the said John A. Thompson and his associates in conspiracy were still in control of the defendant Bridge Company and that demand by interveners to obtain relief from or through said defendant corporation would be unavailing. On November 5, 1933, the court granted the intervention.

After the filing of the petition of intervention, which by order of court was permitted to stand as an answer in behalf of the defendant, Iowa-Wisconsin Bridge Company, the interveners moved the court for permission to bring in the Phoenix Finance Corporation, holder and owner of about ninety- per cent of the outstanding bonds, as a complainant with the trustees. This motion was granted. Thereafter Phoenix Finance Corporation appeared and filed answer to the petition of intervention. The trustees filed a more complete reply to the petition of intervention as amended. The trustees filed a resistance to interveners' application for the production of books and papers of Phoenix Finance Corporation. The court entered an order that the Phoenix Finance Corporation produce all of its books and records pertaining to the business and affairs of the Iowa-Wisconsin Bridge Company, but such books, records and papers were never produced.

On December 3, 1934, all counsel for the parties agreeing, the court appointed a special master to hear all the issues and report his findings of fact and conclusions of law. The Master after taking the evidence, filed his report the 15th day of March, 1936, to which all parties filed exceptions, including the Phoenix Finance Corporation. A hearing was had on the exceptions before the court and on the 1st day of December, 1936, the court entered its decree: "that the mortgage and bonds in suit were fraudulently issued; that all bonds are without consideration with the exception of the bonds aggregating \$15,000.00," which were specified, and those bonds were other than those held by the Phoenix Finance Corporation, held by individuals.

That the considerations and matters relating to the purported notes set forth in plaintiff's demand, and the bonds issued on said notes or as collateral for the payment thereof, and the considerations and other matters connected therewith, were fully litigated as part of the issues in said cause, and the court's decree that all bonds held by the Phoenix Finance Corporation were without consideration, and it has been determined by the court that the alleged notes mentioned in the demand were more than offset by what the Phoenix Finance Corporation owed the Bridge Company. That a copy of the court's decree is hereto attached, marked Exhibit "A", and made a part hereof. That the decision of the trial court was reported in 19 Fed. Supp. 127. That from the decision of the trial court the complainants, including the Phoenix Finance Corporation, took an appeal to the Circuit Court of Appeals for the Eighth Circuit, and the Circuit Court of Appeals has rendered its opinion and order affirming the decision of the trial court, which is reported in 98 Fed. (2d), 416.

That the Phoenix Finance Corporation filed a petition for certiorari in the United States Supreme Court, to which the defendant, Bridge Company will in a few days, and within the time allowed by the rules of said Court, file brief in opposition.

[fol. 519] That by reason thereof the alleged cause of action now demanded on by the plaintiff has been fully adjudicated and settled, by said judgment and decree, and the same is now res adjudicata.

IRENE M. BELL.

Sworn to and subscribed the day and year aforesaid before me.

(Seal)

F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa.

My commission expires July 4th, 1939.

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[fol. 520] Final Decree, December 1, 1936.

United States District Court, Northern District of Iowa,  
Eastern Division.

First Trust & Savings Bank, formerly named Bechtel Trust  
Company, and A. H. Schubert, Trustees, Plaintiffs,

No. 220. vs. Equity.

Iowa-Wisconsin Bridge Company, Defendant,

Fayette D. Kendrick, et al., Interveners.

The above entitled cause came before the Court on the first day of December, 1936, it being the first day of the December 1936 Term of this Court, for the filing of opinion, ruling upon exceptions to the Master's Report, taking final submission of the cause upon the Master's Report and his advisory findings and the evidence in the cause, and the entry of a Final Decree.

On the 5th day of December 1934, the cause being at issue and upon the trial docket, was referred to the Hon. James W. Kindig, as Master<sup>y</sup> in Chancery to take the evidence in the cause and report findings of fact and conclusions of law. On the 10th day of March, 1936, the Master having taken all of the evidence in the cause, filed his report, embodying his findings and conclusions, and thereafter exceptions were filed to said report by the First Trust & Savings Bank formerly named Bechtel Trust Company, and A. H. Schubert, Trustees, and Phoenix Finance Corporation, plaintiffs, and by defendant and interveners. And on the 13th day of June 1936, all respective parties appearing by their counsel, and by agreement of all parties all exceptions to the Master's Report were argued and submitted at the United States Court Room at Fort Dodge, in the Central Division of this District. And thereafter the Court received briefs from all counsel, examined and considered the Master's Report and also all evidence taken before the Master. And the Court now being fully advised in the premises, makes and enters the following rulings:

The exceptions of the plaintiffs, trustees, numbered one to eight inclusive, and of Phoenix Finance Corporation, numbered one to six inclusive, are overruled and exceptions are reserved to the respective plaintiffs. Defendant and interveners' exceptions numbered one, two, five and

ten having been withdrawn, are not further noticed. Defendant and interveners' exceptions numbered three, four, six and seven are overruled, and exceptions reserved to [fol. 521] the defendants and interveners. And defendant and interveners' exceptions numbered eight, nine and eleven are sustained, with exceptions reserved to all opposing parties.

The Court having ruled upon all exceptions, and allowed exceptions to all rulings, now takes final submission of the cause upon the Master's advisory report, findings and conclusions, and upon all evidence taken before the Master and upon depositions filed in the cause and introduced before and considered by the Master.

And the Court now being fully advised in the premises, it is Ordered, Adjudged and Decreed that the findings and conclusions of the Master, except as modified and amplified by additional findings, be adjudged as the findings and conclusions of the Court, with such additional findings and conclusions as are filed in the cause. That the mortgage and bonds in suit were fraudulently issued. That all bonds are without valid consideration, with the exception of the bonds aggregating \$15,000., hereinafter specified. That the bill of the plaintiffs be dismissed as to the plaintiff, Phoenix Finance Corporation, and that the prayer of the bill be denied, except in so far as the Decree provides for the protection of the holders of said \$15,000. in bonds. That foreclosure and sale of the mortgaged property be denied, but that in lieu thereof all earnings and revenues of the Iowa-Wisconsin Bridge Company over and above such as may be absolutely necessary to pay maintenance, operating expenses and taxes, be sequestered and impounded for the purpose of paying the following bonds with interest, to-wit, \$4000 in bonds, due Bradshaw, Schenk and Fowler, \$6000. in bonds, due Helmer N. Anderson and \$1000 in bonds due each of the following, Laura B. Baker, J. W. Dempsey, Lyle Sign Company, M. B. Stone and Cobb, Hoke, Benson, Krause and Faegre, or their respective assigns. That the property be retained under receivership until these obligations, with interest, are fully paid either out of the revenues sequestered as aforesaid, or by other funds found and furnished by the Bridge Company.

Jurisdiction is hereby reserved to deal with all matters arising under the receivership and in connection with adjustment and payment of taxes and counsel fees.

It is Further Ordered, Adjudged and Decreed that the entire costs in the case be taxed to the plaintiffs, First Trust & Savings Bank, formerly named Bechtel Trust Company, and A. H. Schubert, Trustees, and Phoenix Finance Corporation. To all of which the plaintiffs have duly excepted.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, December 1, 1936.

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[fol. 522] In the Superior Court of the State of Delaware,  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized  
and existing under the laws of the State of Delaware,  
No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized  
and existing under the laws of the State of  
Delaware.

New Castle County:—ss.:

Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, the defendant in this suit, was summoned to answer Phoenix Finance Corporation, a corporation of the State of Delaware, the plaintiff in this suit, of a plea of trespass on the case upon promises, and thereupon the said plaintiff, by Marvel, Morford & Logan, its attorneys, complains:

For That Whereas, the said defendant, heretofore, to-wit, on the 15th day of December, A. D. 1932, at Des Moines, in the County of Polk, State of Iowa, to-wit at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay, on the 15th day of June,



A. D. 1933, to the said plaintiff, or order, the sum of Two [fol. 523] Thousand Dollars (\$2,000.00) for value received, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

And Whereas, Also, the said defendant, heretofore, to-wit, on the 15th day of December, A. D. 1932, at Des Moines, in the County of Polk, State of Iowa, that is to say at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay at 316 12th Street, Des Moines, Iowa, on the 15th day of June, A. D. 1933, to the said plaintiff, or order, the sum of Two Thousand Dollars (\$2,000.00) for value received, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to [fol. 524] the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

And Whereas Also, the said defendant, heretofore, to-wit, on the 20th day of January, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, to-wit at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay, on the 20th day of July,

A. D. 1933, to the said plaintiff, or order, the sum of Three Thousand One Hundred and Twenty-five Dollars (\$3,125.00) for value received, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

[fol. 525] And Whereas, Also, the said defendant, heretofore, to-wit, on the 20th day of January, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, that is to say at New Castle County aforesaid, made its certain promissory note in writing, bearing date the day and year aforesaid, and thereby then and there promised to pay at 316 12th Street, Des Moines, Iowa, on the 20th day of July, A. D. 1933, to the said plaintiff, or order, the sum of Three Thousand One Hundred and Twenty-five Dollars (\$3,125.00) for value received, and then and there delivered the said promissory note to the said plaintiff; by means whereof and by force of the statute in such cases made and provided, it, the said defendant, then and there became liable to pay to the said plaintiff the said sum of money in the said promissory note specified, according to the tenor and effect of the said promissory note; and being so liable, it, the said defendant, in consideration thereof, afterwards, to-wit on the day and year aforesaid, at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff to pay it the said sum of money in the said promissory note specified, according to the tenor and effect thereof.

And Whereas, Also, the said defendant, afterwards, to-wit, on the 15th day of June, A. D. 1938, at Des Moines, in the County of Polk, State of Iowa, that is to say at New

Castle County aforesaid, was indebted to the said plaintiff in the sum of Five Thousand One Hundred and Twenty-five [fol. 526] Dollars (\$5,125.00), for so much money by the said plaintiff before that time lent and advanced to the said defendant at its like instance and request.

And Whereas Also, the said defendant afterwards, to-wit, on the 20th day of January, A. D. 1933, at Des Moines, in the County of Polk, State of Iowa, that is to say, at New Castle County aforesaid, was indebted to the said plaintiff in the further sum of Two Thousand Five Hundred Dollars (\$2,500.00) for so much money before that time and then due and payable from the defendant to the said plaintiff for interest upon and for the forbearance of divers large sums of money before then lent and advanced by the said plaintiff to the said defendant at its special instance and request, and by it the said plaintiff forborne to the said defendant for divers long spaces of time, before then elapsed, at the like special instance and request of the said defendant, and also for other money, before that time and then due and payable from the said defendant to the said plaintiff for interest upon and for the forebearance of divers other large sums of money before then due and owing from the said defendant to the said plaintiff, and by it, the said plaintiff, forborne to the said defendant for divers large spaces of time before then elapsed, at the like special instance and request of the said defendant.

And, being so indebted, it, the said defendant, in consideration thereof, afterwards, to-wit, on the day and year aforesaid, at Des Moines, in the County of Polk, State of Iowa, that is to say at New Castle County aforesaid, undertook and then and there faithfully promised the said plaintiff [fol. 527] to pay it the said aforementioned sums of money when it, the said defendant, should be thereunto afterwards requested.

Nevertheless, the said defendant, not regarding its said several promises and undertakings in this behalf, did not pay to the said plaintiff the several sums of money above mentioned or any of them or any part thereof, although often requested so to do; but the said defendant hath hereunto neglected and refused and still doth neglect and refuse to pay the same to the said plaintiff, to the damage of the

said plaintiff of the sum of Ten Thousand Dollars (\$10,000.00) and therefore it brings its suit, &c.

**MARVEL, MORFORD & LOGAN,**  
Attorneys for Plaintiff.

[fol. 528] Copy of Instruments Sued Upon.

\$3,125.00

Des Moines, Iowa, Jan. 20, 1933.

On the 20 day of July, 1933, for value received, We promise to pay to the order of Phoenix Finance Corporation the sum of Thirty-one hundred twenty-five and no/100 Dollars Payable at 316 12th Street, Des Moines, Iowa. with interest at 8 per cent per annum from date. Interest payable semi annually.

Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00, and hereby severally waive demand of payment, protest, and notice of protest of this note and consent that time of payment may be extended without notice. A failure to pay interest when due, shall cause this note to become due.

**IOWA-WISCONSIN BRIDGE  
COMPANY,**

By Oscar R. Thorson,

Secretary-Treasurer.

P. O. Address

No.

[fol. 529] \$\*\*2,000.00\*\* Des Moines, Iowa, December 15,  
1932.

On the 15 day of June, 1933, XXXXX for value received we promise to pay to the order of Phoenix Finance Corporation the sum of Two Thousand and No/100 Dollars Payable at 316 12th Street, Des Moines, Iowa, with interest at 8 per cent per annum from date. Interest payable semi-annually.

Upon default of payment of this note, the makers, endorsers, guarantors, and sureties, agree to pay all attorneys' fees and expenses of collection, and consent that any justice of the peace may have jurisdiction on this note to the amount of \$300.00, and we hereby severally waive demand of payment protest, and notice of protest of this note and consent that time of payment may be extended without notice. A failure to pay when due, shall cause this note to become due.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Oscar R. Thorson,

Secretary-Treasurer.

P. O. Address .....

No. ....

[fol. 530]

Bill of Particulars.

For money lent and advanced to Iowa-Wisconsin Bridge Company by Phoenix Finance Corporation, to-wit, on or about the 15th day of December, A. D. 1932 .....	\$2,000.00
For interest due and owing upon the above sum of money by Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation from the 15th day of December, A. D. 1932 to date .....	1,000.00
For money lent and advanced to Iowa-Wisconsin Bridge Company by Phoenix Finance Corporation, to-wit, on or about the 20th day of January, A. D. 1933 .....	3,125.00
For interest due and owing upon the above sum of money by Iowa-Wisconsin Bridge Company to Phoenix Finance Corporation from the 20th day of January, A. D. 1933 to date .....	1,500.00

[fol. 531] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Dec. 28, 1938. Def't. pleads, with copy.

Rule reps & issues by second general rule day in January.

[fol. 532] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

The defendant pleads to each and every count of the plaintiff's declaration, as follows:

1. Non Assumpsit.
2. Statute of Limitations.
3. Payment.
4. Accord and satisfaction.
5. Set-off.
6. Release.



## 7. Res Adjudicata.

WARD and GRAY,  
Attorneys for Defendant.

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[fol. 533] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Jan. 20, 1939. Plaintiff enters reps & issues.

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[fol. 534] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

The plaintiff above-named, by Marvel, Morford and Logan, its attorneys, enters reps. and issues to each of the pleas filed by the defendant in the above-stated cause.

MARVEL, MORFORD & LOGAN,  
Attorneys for Plaintiff.

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[fol. 535] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

March 6, 1939. Petition filed by Ward & Gray, Esqs. for Commissioners to take testimony.

[fol. 536] (Petition of Defendant for Appointment of Commissioners to take Testimony of John W. Shaffer, et al.)

In the Superior Court of the State of Delaware in and for  
New Castle County

Summons Case

November Term A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

To The Honorable Richard S. Rodney, Judge In The Superior Court Of The State Of Delaware,

And Now, to-wit, this Sixth day of March, A. D. 1939, the defendant in the above entitled cause by Ward and Gray, its attorneys, in pursuance and by virtue of Rule 62 of the Superior Court of the State of Delaware, hereby makes application to the Honorable Richard S. Rodney, one of the Judges of the Superior Court of the State of

Delaware, in and for New Castle County, for the appointment of Commissioners to take the testimony of John W. Shaffer, Margaret E. Lockhart, J. R. Smith, M. E. Mortenson, Dwight F. Johns, Arthur I. Prendergast, Avery F. Crounse, Vernon W. O'Connor, George E. Rodgerson, Fayette D. Kendrick, George C. Dittman, who reside without the State of Delaware, without written interrogatories filed, upon oral examination and subject to cross-examination and re-examination by the parties or their attorneys.

WARD AND GRAY,  
Attorneys for Defendant.

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[fol. 537] (Order appointing Commissioner to take  
Testimony.)

In the Superior Court of the State of Delaware in and for  
New Castle County

Summon Case

November Term A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

To The Honorable Richard S. Rodney, Judge In The Superior Court Of The State Of Delaware:

And Now, to-wit, this sixth day of March, A. D. 1939, the foregoing application having been presented,

It Is Ordered that a Commission issued to John A. Mansfield, 501 New York Life Building, Minneapolis, Minnesota, to take the testimony of John W. Shaffer, Margaret E. Lockhart, J. R. Smith, M. E. Moretenson, Dwight F. Johns, Arthur I. Prendergast, Avery F. Crounse, Vernon W. O'Connor, George E. Rodgerson, Fayette D. Kendrick, and George C. Dittman, and such other witnesses as may be presented on behalf of the defendant in the above stated cause without written interrogatories filed, upon oral ex-

amination and subject to cross-examination and re-examination by the parties or their attorneys; said testimony to be taken in the State of Minnesota, to be taken at a time and place to be fixed by the said John A. Mansfield, Commissioner, and the attorney for the plaintiff is to be given ten days' notice, of the time and place for the examination [fol. 538] of witnesses and said commission shall be returnable not later than the 28th day of April A. D., 1939.

And It Is Further Ordered, that a commission issue to Howard L. Bump, Crocker Building, Des Moines, Iowa, to take the testimony of Madge White, Oscar Thorson, and such other witnesses as may be presented on the behalf of the defendant in the above stated cause, who reside without the State of Delaware, without written interrogatories filed, upon oral examination and subject to cross-examination and re-examination by the parties or their attorneys; said testimony to be taken in the State of Iowa, to be taken at a time and place to be fixed by the said Howard L. Bump, Commissioner, and the attorney for the plaintiff is to be given ten days' notice, of the time and place for the examination of witnesses and said commission shall be returnable not later than the 28th day of April A. D. 1939.

And It Is Further Ordered, that a commission issue to F. A. O'Connor, Dubuque, Iowa, to take the testimony of Lee McNeely, and such other witnesses as may be presented on the behalf of the defendant in the above stated cause, who reside without the State of Delaware, without written interrogatories filed, upon oral examination and subject to cross-examination and re-examination by the parties or their attorneys; said testimony to be taken in the State of Iowa, to be taken at a time and place to be fixed by said F. A. O'Connor, Commissioner, and the attorney for the plaintiff is to be given ten days' notice, of the time and place for the examination of witnesses and said commission shall be returnable not later than the 28th day of April A. D. 1939.

RICHARD S. RODNEY,

J.

[fol. 539] (Stipulation That Pleadings be omitted from  
Commissions to take Testimony, etc.)

In the Superior Court of the State of Delaware in and for  
New Castle County

November Term A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

It Is Hereby Stipulated By and between Arthur G. Logan, Esq., attorney for plaintiff in the above entitled cause, and Daniel F. Wolcott, Esq., one of the attorneys for the defendant in the above entitled cause, that copies of the pleadings in the above entitled cause be omitted from the Commissions to take testimony outside of the State of Delaware issued pursuant to the Order of the Superior Court of the State of Delaware in and for New Castle County on the Sixth day of March, A. D. 1939.

ARTHUR G. LOGAN,  
Attorney for Plaintiff.

DANIEL F. WOLCOTT,  
Attorney for Defendant.

[fol. 540] In the Superior Court of the State of Delaware  
in and for New Castle County

Summons Case

November Term, A. D. 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39 vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

Mar. 7, 1939. Exit Commission to Howard L. Bump, Des Moines, Iowa.

Mar. 7, 1939. Exit Commission to John A. Mansfield, Minneapolis, Minn.

Mar. 7, 1939. Exit Commission to F. A. O'Connor, Dubuque, Iowa.

May 3, 1939. Affidavit for continuance filed.

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[fol. 541]                      Affidavit for Continuance

In the District Court of the State of Delaware in and for  
New Castle County

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

State of Iowa,

Cerro Gordo County—ss.:

I, Irene M. Bell, being first duly sworn on oath depose and say that I am Secretary and Treasurer of the Iowa-Wisconsin Bridge Company and that the following witnesses are sought to be examined: John W. Shaffer, Margaret E. Lockhart, J. R. Smith, M. E. Mortenson, Dwight F. St. Johns, Arthur I. Pendergrast, Avery F. Crounse, Vernon O'Connor, George E. Rodgerson, Fayette D. Kendrick, George C. Dittman, Madge White, Oscar R. Thorson, Andrew Gullickson, T. H. Bakewell, Mrs. E. J. Parman, Lee McNeely. That none of said witnesses are residents of Delaware and cannot be reached by subpoena and if present would testify to the following facts:

John W. Shaffer That in October or November 1930, through negotiations with J. W. Shaffer and Vernon O'Connor, John A. Thompson became president and acquired control of the Iowa-Wisconsin Bridge Company and that at the same time the number of directors of the bridge



[fol. 542] company was increased and Thompson, together with other directors of the Phoenix Finance System, Inc., (Predecessor of Phoenix Finance Corporation) became directors of the Iowa-Wisconsin Bridge Company, and that from that time on Thompson and Phoenix controlled the bridge company; that at that time Thompson acquired and had full knowledge of the contents of certain contracts and assignments thereof and of subcontracts and the relationship of the parties thereto between themselves and the bridge company, one of such contracts being a contract let by Standard Shares Holding Company as Trustee for the bridge company, acting by John W. Shaffer, wherein it was contracted with Vernon W. O'Conner, Shaffer's partner and co-promoter, to erect the sub-structure of the bridge, said contract calling for the payment of a total of \$193,196.80, estimates to be approved and work to be accepted by Shaffer as engineer for the bridge company; that the approval of this contract by the bridge company was signed by Shaffer as Secretary of the bridge company; that the contract was immediately sub-let by O'Conner to the Industrial Contracting Company for a maximum total of \$120,748.00; and then on April 4, 1930 this contract was assigned by O'Conner to John W. Shaffer and Company; that the amount actually paid the sub-contractor for completion of this work was \$97,971.36. On November 26, 1930 a stated settlement as of October 31, 1930 was made between the Standard Shares Holding Company and the Bridge Company, under which there were delivered to the Bridge Company by its trustees, liquid assets, such as cash, bills and accounts receivable, stocks and bonds, in-[fol. 543] ventoried at \$90,235.68; construction accounts representing amounts which had been paid for construction to date aggregating \$183,496.90, and equipment, etc., amounting to \$1,986., and commission and organization and expense accounts amounting to \$75,231.08, making a total of \$350,950., and there had been sold by said trustee for the account of the Bridge Company stock of the latter at \$100 per share, amounting to \$350,950. The settlement also provided for the return of all stock of the Bridge Company held by said trustee except 1500 shares of Class B stock, which were returned to the Bridge Company in consideration of a so-called management contract, the

terms of which are immaterial in this litigation. On the \$90,835 of liquid assets, there was later realized over \$79,000 in cash and the Bridge Company had treasury stock in the amount of \$390,050 to build its superstructure and complete its bridge. The substructure was practically complete and the sub-contractor thereof had been paid within \$8300 of the total cost and the grading was well under way.

[Under date of November 11, 1930 a contract for the completion of the bridge was entered into between the Bridge Company, acting through John A. Thompson as president and John W. Shaffer & Company, which included erection of super-structure of the bridge, erection of piles and trestles over certain slough, erection of toll house, etc., and surfacing of roadway and whereby the Bridge Company agreed to and did pay \$10,000 in cash and agreed to and did deliver 3200 shares of its capital stock at a fixed price of \$320,000, to John W. Shaffer & Company, and Shaffer & Company in said contract agreed to furnish a surety bond to insure the obligations of said Shaffer & Company. Extras were required to be ordered in writing. John W. [fol. 544] Shaffer & Company sub-let the contract for steel to McClintic-Marshall Company and let the construction work to the Industrial Contracting Company.

In November 1930, immediately after the issuance of said 3200 shares of stock to Shaffer & Company, the latter company sold said stock to Thompson & Company and received the promissory note of Thompson & Company for \$224,000 therefor.

That on or about the 1st day of November 1930 140 shares of bridge company stock were issued to the Phoenix Finance System, Inc. and the value thereof fixed at \$100 per share, to-wit: \$14,000 and that such stock was issued without lawful consideration and disposed of by the Phoenix Finance System, Inc. to the public; that thereafter John A. Thompson, then president of the bridge company, dominating and controlling the bridge company, caused the execution of a purported guaranty contract, providing for the turning over to the Phoenix Finance System, Inc. such stock without payment therefor; that in such transaction John A. Thompson acted in a dual capacity, as president of the bridge company and as president of the

Phoenix Finance System, Inc.; that John W. Shaffer and Company did not receive \$25,000 on sub-structure, \$5000 on grading and \$5000 on engineering entered on the books of the bridge company as part of purported consideration for \$50,000 mortgage on the bridge company's property to the Phoenix Finance System, Inc.; that such payments were not made. That A. B. Wilder, who was a director of Phoenix Finance System, Inc. and of the Iowa-Wisconsin Bridge Company did not perform any services for the bridge company warranting the payment of about \$3000 to him about March 1st 1931.

[fol. 545] Margaret E. Lockhart That she kept the books and records of John W. Shaffer and Company; that the alleged payments of \$25,000 on sub-structure, \$5,000 on grading and \$5000 on engineering were not made to John W. Shaffer & Company and to identify and to prove the books and records of said John W. Shaffer and Company.

J. R. Smith To identify certain bank accounts of Vernon O'Conner and to show what accounts were kept in the Northwest National Bank and Trust Company of Minneapolis, Minnesota, relating to the matters involved.

M. E. Mortenson To show that he is or was the Assistant Cashier of the Marquette National Bank of Minneapolis, Minnesota in 1930 and 1931 and to show an escrow account carried by Phoenix Finance System, Inc. in the trust department and the facts with respect to it and an account of the Iowa-Wisconsin Bridge Company and an account of John W. Shaffer and Company.

Dwight F. St. Johns To show that he is the United States Army District Engineer for the District of St. Paul and that he had an audit made under his supervision as to the cost of the Iowa-Wisconsin bridge and that the cost thereof was not as reported, and was less than set up on the bridge company books, and that said \$14,000 of stock was issued without consideration, as well as other items of costs that were stated.

Arthur I. Pendergrast and Avery F. Crounse That they were sub-contractors for the construction of the substructure of the bridge and that they entered into a contract

with respect thereto for a maximum total of \$120,748.00 and that the actual amount paid them for the completion of the work was \$97,971.36.

[fol. 546] Vernon O'Conner. That the Phoenix Finance System, Inc., through its president, John A. Thompson, was in control of the Iowa-Wisconsin Bridge Company; that Vernon O'Conner, on the misrepresentations of John A. Thompson, signed a purported guaranty contract, whereby the Phoenix Finance System, Inc., procured \$14,000 of bridge company stock; that he signed such contract without reading it or knowing its contents.

George E. Rodgerson That about February 5, 1931, John A. Thompson engaged Elliott-Rodgerson Company as brokers to sell stock purchased by Thompson & Company from Shaffer & Company and personally and on behalf of Phoenix Finance System, Inc., represented to the public that there would be no mortgage or bonds placed against the bridge and said Phoenix Finance System, Inc. represented and agreed in writing signed by John A. Thompson as president that there was no funded indebtedness against the bridge and that Phoenix Finance System, Inc. had unconditionally guaranteed the payments to McClintic-Marshall Company and to Industrial Contracting Company, and had agreed to pay for the completion of the bridge; that if all the money to be paid sub-contractors was not raised through stock sales as needed, the deficiency would be promptly supplied by Phoenix Finance System, Inc. to be repaid to it as later stock sales accumulated funds for that purpose. Thompson did not disclose any purported contract of indemnity by the Bridge Company to Phoenix Finance System, Inc. or that he had any intention of placing any mortgage on the bridge.

[fol. 547] Oscar R. Thorson and M. White A stockholders' meeting of the Bridge Company was held March 10, 1931, which was controlled by the stock of Thompson & Company and John A. Thompson, 1310 shares and proxies held by Thompson 375 shares, a total of 1685 shares out of 2586 shares represented, at which meeting a board of directors was elected controlled by said Thompson. Following said stockholders' meeting, a directors' meeting was held at-

tended only by Thompson directors, viz., V. W. O'Conner, John A. Thompson, A. B. Wilder and Oscar R. Thorson. At this meeting, there was passed a purported resolution providing for the issuance of a \$50,000 mortgage to the Phoenix Finance System, Inc. on the properties of the Iowa-Wisconsin Bridge Company which resolution contained the false and fraudulent recital that funds received from sale of stock had been inadequate to properly finance the rapid completion of the bridge; whereas, the Bridge Company ther had nothing to do with the sale of stock and it had delivered to J. W. Shaffer & Company \$320,000 of its stock and \$10,000. in cash for the completion of the bridge. That pursuant to such resolution a mortgage was executed to Phoenix Finance System, Inc. for \$50,000 signed on behalf of the Bridge Company by A. B. Wilder, who was then also an officer and director of said mortgage company. That in truth and in fact no indebtedness of said Bridge Company to the Phoenix Finance System, Inc., existed and the Bridge Company received no consideration for the execution of said mortgage; that the same was and is wholly without consideration, fraudulent and void. At said time said Thompson caused entries to be made on the books of said Bridge Company purporting to show the receipt of \$50,000 in cash, whereas, in truth and in fact, said amount and no part thereof was received by the Bridge Company.

[fol. 548] Said Thompson caused entries to be made on the books of the Bridge Company as though the following payments were made, \$25,000 on sub-structure, \$5000 on grading and \$5000 on engineering, when in truth and in fact no such payments were made in any form, and also caused entries to be made on the Bridge Company's books as though the bridge company owed \$15,000 to Thompson & Company, wholly owned subsidiary of Phoenix Finance System, Inc., when in truth and in fact there was nothing due from the Bridge Company to Thompson & Company or Phoenix Finance System, Inc., but on the contrary there was due over \$3,000 from Thompson & Company to the Bridge Company and the aforesaid entries were wholly false.

That John A. Thompson on November 5, 1930, purchased 65 shares of Bridge Company stock from the Bridge Com-



pany at \$100 per share, and on the same day A. B. Wilder, also a director of the Bridge Company, purchased 10 shares of Bridge Company stock from the Bridge Company at \$100 per share. That on the 31st day of December, 1930, Thompson & Company purchased 170 shares of Bridge Company stock from the Bridge Company at \$100 per share. That subsequent to such purchase of stock by John A. Thompson and A. B. Wilder on the 31st day of December, 1930, the said John A. Thompson, through his dominant control of the Bridge Company, credited to Thompson & Company on the books of the Bridge Company 15% commission on all of the aforesaid stock in the sum of \$3,675. That it was the duty of John A. Thompson and A. B. Wilder as directors of the Bridge Company to assist in selling [fol. 549] stock owned by the Bridge Company. That in the selling of said stock no exceptional or extraordinary services were rendered and they were not entitled to credit for said commissions.

That about the 11th of March 1931 John A. Thompson and his affiliated companies, through the dominant control of the Iowa-Wisconsin Bridge Company, caused a payment of \$3,000 to be made from the funds of the Bridge Company to A. B. Wilder through the medium of checks issued to John W. Shaffer and immediately endorsed and delivered to A. B. Wilder, and \$1000 thereof was then turned over to Thompson & Company by said Wilder. That the said Wilder was then an officer and director of the Phoenix Finance System, Inc., and also a director of the Bridge Company. That no resolution was passed by the stockholders or directors of the Bridge Company authorizing such payments to said Wilder nor was there any action taken or resolution passed by the Bridge Company providing for the payment of any amount to said Wilder for services nor had there been nor were there any exceptional or extraordinary services rendered by said Wilder to the Bridge Company. That no consideration passed to the Bridge Company for such sums. That the said Thompson and his affiliated companies controlling the Bridge Company, so manipulated its books as to cause fictitious entries to be made thereon as though said sums were paid



on approaches, when in fact no work was done on approaches for which said sums or any part thereof was a proper payment. That payment of said amounts was a misappropriation of the Bridge Company's funds.

That on the 1st day of November 1931 John A. Thompson and his affiliated companies through the exercise of dominant control of the bridge Company turned over to [fol. 550] the Bridge Company \$5,410.85 of notes taken by Thompson & Company in the sales of bridge company stock owned by Thompson & Company and with which Thompson & Company held as collateral such stock sold by it. That substantially all of said notes were worthless. That said Thompson & Company took or received from the bridge company \$5,410.85 for such notes. That in such transaction John A. Thompson acted in a dual capacity as president of the bridge company, and as president of the Phoenix Finance System, Inc., and in the interests of himself and his affiliated companies against the interests of the bridge company and dealt with himself in such transaction. The bridge company at the time of such transaction did not have any surplus from which it could purchase any of its stock.

That through the control of Iowa-Wisconsin Bridge Company as aforesaid, said John A. Thompson and Phoenix Finance System, Inc. (predecessor to Phoenix Finance Corporation) caused a trust deed and \$200,000 bond issue to be issued by the Iowa-Wisconsin Bridge Company and that a large amount of bonds of the Iowa-Wisconsin Bridge Company were thus caused to be delivered for purported considerations of said Phoenix Finance System, Inc., but which were without proper consideration.

That on July 7, 1933 a meeting of the board of directors of the bridge company was held at which there were present John A. Thompson, Emory H. English, Oscar R. Thorson, H. T. Wagner, A. B. Wilder, M. K. Thompson and G. W. Huntley, all but one of the members present, G. W. Huntly, being Thompson-Phoenix Finance Corporation controlled directors. At this meeting vice-president Emory H. English and Secretary Thorson reported a purported indebtedness to the Phoenix Finance Corporation of \$12,110.19 on open account and \$5,625 on notes, \$9,806.10

of said \$12,110.19 being purported interest furnished by Phoenix Finance Corporation on the aforesaid fraudulent bonds held by the Phoenix, which were known to the officers of the Phoenix Finance Corporation to be fraudulent, and \$1505.75 being charged to the bridge company for Phoenix Finance Corporation officers and employees, and an item of \$650 which was merely a journal entry and which neither the bridge company gained nor lost. During the period the officers of the Phoenix thus purportedly charged the bridge company for salaries of the Phoenix Finance System, Inc., officers and employees, the bridge company was paying for its own toll keepers and was paying Thorson \$400 per month as Secretary-Treasurer to take care of its accounts, which did not require much bookkeeping and there was no occasion for charging the bridge company with the salaries of the Phoenix Finance System, Inc. officers and employees, because it had ample help of its own.

On motion of Wagner, seconded by Wilder, a resolution was adopted through the Thompson-Phoenix Finance Corporation controlled directors directing the execution of a demand note to the Phoenix for \$12,110.19, to cover the purported items contained in said open account and instructing the treasurer to pledge \$21,100 of the Class B bridge company bonds as collateral to this note and to two other purported notes, which latter notes are the ones set up in plaintiffs' demand, one for \$2000 and one for \$3,125, hereinafter further referred to.

At the same time of the purported payment of interest on the purported bonds through an alleged loan of the Phoenix Finance Corporation to the bridge company, John [fol. 552] A. Thompson, Emory H. English and A. B. Wilder were directors and officers of the Phoenix Finance Corporation, and were also officers and directors of the bridge company and controlled its accounts and the debits and credits placed on the books of the bridge company, the actual entries being made by M. Graney, an employee and assistant secretary of the Phoenix Finance Corporation. John A. Thompson and Emory H. English, to carry out a purported transaction as though the payment of interest were made by the bridge company on the 7th day of February 1933 made a deposit for the Phoenix Finance Corporation to the account of the bridge company in the

sum of \$6896.00 and on the same date they drew three checks to the Bechtel Trust Company, one No. 189 for \$6480, payment of interest; one No. 190 for \$15.00 payment of Government tax, and one No. 191 for \$401 marked accounts payable, representing the charge of the Bechtel Trust Company, making the aggregate of \$6896. These checks on the part of the bridge company were all signed by M. Graney, employee of the Phoenix Finance Corporation. A check for \$6480 representing interest, was thereafter remitted to Phoenix Finance Corporation, they being the holders of all the bonds on which interest was paid. On the 10th day of February 1933 though the bridge company was paying interest on the bonds, the said Thompson and Emory H. English deposited to the account of the bridge company, by the Phoenix Finance Corporation, \$2,910.00. At the same time a check was written on the account of the Bridge Company in the Iowa-Des Moines National Bank, No. 193, for \$2,910.00 to Bechtel Trust Company, being dated February 9th, 1933, payment of interest due January 1st, 1933 on Class A bonds held by Phoenix Finance Corporation. This check was also signed by M. Graney.

[fol. 553] The purported interest payment on bonds was a mere manipulation of Thompson and officers and employees of the Phoenix Finance Corporation while controlling the Bridge Company and its books and accounts for the purpose of making it appear as though the bridge company paid interest on the fraudulent bonds and with the evident purpose of attempting to create a supposed waiver in favor of the Phoenix Finance Corporation of the fraudulent character of the bonds, or an estoppel, to the detriment of the bridge company.

Then there is an item of \$109.86, being for claimed balance on the invalid and fraudulent exchange of 517 shares of stock for bonds.

That none of the aforesaid claims were valid claims. That at the time of the purported and pretended execution of each of the two notes set forth in plaintiffs' demand, John A. Thompson—Phoenix Finance Corporation controlled and dominated the Iowa-Wisconsin Bridge Company, its officers and directors, and said John A. Thompson at said

time was president of the Iowa-Wisconsin Bridge Company, and of the Phoenix Finance Corporation, and that both he and other directors of the Phoenix Finance Corporation, who were also directors of the Bridge Company, were acting in a dual capacity against the interests of the bridge company when they caused the execution of said notes if said notes were executed. At the dates of said pretended notes and their claimed execution, the Phoenix Finance Corporation was indebted to the Bridge Company in far greater amount than the amount of said notes. That at that time it was indebted to the bridge company in the sum of \$3,000.00, for checks of the bridge company of that amount given to A. B. Wilder at the time of the execution of the fraudulent \$50,000 mortgage, without consideration, which \$3,000.00 had not been repaid to the bridge company. That [fol. 554] the conspirators, John A. Thompson, Phoenix Finance Corporation and Thompson & Company, were jointly and severally liable therefor, and said notes were offset by the \$3,000.00 thus wrongfully appropriated from the bridge company, and disbursed \$2,000 to A. B. Wilder and \$1,000 check to Thompson & Company, and were further offset by the fact that the Phoenix Finance System, Inc. and its successor, the Phoenix Finance Corporation also owed the bridge company \$14,000 with interest thereon from November, 1930, for bridge company stock which it had received fraudulently without consideration, and charged to promotion, through the dominant control of John A. Thompson, and offset by other items due the bridge company from the Phoenix Finance Corporation. That at the date of said purported notes mentioned in plaintiffs' demand, the Phoenix Finance Corporation was indebted to the bridge company in a far greater amount than the amount of said purported notes, and if at that time the Phoenix Finance Corporation made any payment to or put any funds into the account of the bridge company, it was merely a partial payment on what was due the bridge company from the Phoenix Finance Corporation, and did not furnish any basis or consideration for the execution of said purported notes, and said notes are without consideration, which fact was well known to the said John A. Thompson and the Phoenix Finance Corporation; that said purported notes are not under seal, and that said notes were never lawfully executed and delivered.

Fayette D. Kendrick, George C. Dittman, Andrew Gullickson and T. H. Bakewell and Mrs. E. J. Parman.

That stock of the bridge company was sold to certain stockholders on the representations of the Phoenix Finance System, Inc., its subsidiary Thompson & Company and John A. Thompson that the bridge company property was unen-[fol. 555] cumbered, and that untrue statements were made at a stockholders' meeting of the bridge company to carry out the scheme and plan to fraudulently issue the bonds.

Lee McNeely That he is the Clerk of the United States District Court for the Northern District of Iowa; that an action was filed in said court in his office for the Eastern Division entitled Bechtel Trust Company and A. H. Schubert, as trustees versus the Iowa-Wisconsin Bridge Company; that later Fayette D. Kendrick and other stockholders of the defendant bridge company intervened and that the Phoenix Finance Corporation on motion of interveners was made a party co-complainant; that said action was an action for foreclosure of the aforesaid purported trust deed and bonds and to identify the records in said cause and to show that the items involved in the instant case were involved in and adjudicated in said cause in the Federal Court against the Phoenix Finance Corporation.

That this affiant is informed and believes that the statements contained in the foregoing affidavit are true and states that insofar as they relate to any act or deed of this affiant they are true.

IRENE M. BELL

Subscribed and sworn to before me by the said Irene M. Bell this 29th day of April, A. D. 1939.

Notarial Seal

F. T. BARRETT,  
Notary Public in and for  
Cerro Gordo County, Iowa.

My commission expires July 4, 1939.

[fol. 556] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, A. D. 1938.

Summons Case.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

May 19, 1939. Continued to November Term.

May 20, 1939. Replaced on trial list.

June 15, 1939. Heard by the Court without the intervention of a Jury. Briefs to be submitted.

June 30, 1939. Stipulation by and between attorneys for the plaintiff and the defendant for the correction of Defendant's Exhibit #5 filed.

[fol. 557] In the Superior Court of the State of Delaware  
In and For New Castle County.

November Term, 1938.

Phoenix Finance Corporation, a corporation duly organized and existing under the laws of the State of Delaware,

No. 39. vs.

Iowa-Wisconsin Bridge Company, a corporation duly organized and existing under the laws of the State of Delaware.

It Is Stipulated and Agreed by and between James R. Morford, one of the attorneys for the plaintiff, and Daniel F. Wolcott, one of the attorneys for the defendant in the above stated cause, that Defendant's Exhibit No. 5 offered in evidence in said cause be corrected in the following respects:



1. Page 177, line 20—change the word “charged” to “pledged.”

2. Page 182, line 10—omit word “only.”

3. Page 183, line 22, and p. 184, line 5—change “minute book No. 2” to “minute book No. 3.”

4. Page 188, line 17—change word “appropriation” to “proportion.”

5. Page 203, line 20—change word “received” to “made.”

6. Page 230, line 1—change “\$2,549.36” to “\$5,549.36.”

7. Page 235, line 22—change “Shaffer & Company” to “Bridge Company.”

[fol. 558] It Is Further Stipulated that with the approval of the Court, said corrections may be made physically upon defendant’s Exhibit No. 5 by the Court Stenographer.

The foregoing stipulation is without prejudice to the objections of the attorney for the plaintiff to the admission of said Exhibit, as the same appear of record and without prejudice to the plaintiff’s pending motion to strike the same.

JAMES R. MORFORD,  
Attorney for Plaintiff.

DANIEL F. WOLCOTT,  
Attorney for Defendant.

Dated June 30, 1939.

[fol. 559] (Exhibit SC-102.)

Bill of Complaint.

February 18, A. D. 1939—Bill of Complaint filed, which said bill is in words and figures as follows:

To the Chancellor of the State of Delaware:

Humbly complaining, sheweth unto your Honor, your Orator, Phoenix Finance Corporation, as follows:

1. That your Orator, Phoenix Finance Corporation, is a corporation duly organized and existing under the laws

of the State of Delaware, having been incorporated on the 29th day of December, 1931, and having its principal place of business within the State of Delaware at 900 Market Street, City of Wilmington, State of Delaware.

2. That the respondent, Iowa-Wisconsin Bridge Company, is a corporation duly organized and existing under the laws of the State of Delaware, having been organized as Lansing Bridge Company on the 20th day of March, A. D. 1928, and thereafter, on the 11th day of June, A. D. 1928, having changed its name to Iowa-Wisconsin Bridge Company by an amendment to its certificate of incorporation. Said corporation has its principal place of business within the State of Delaware at 100 West Tenth Street, Wilmington, Delaware.

3. That said respondent has an authorized capital stock consisting of 3,750 Class A shares of the par value of \$100, and 3,750 Class B shares without par value. Said Class A shares are without voting rights, except as expressly conferred by statute, while said Class B shares have the sole right to elect directors for said corporation. At the present time, 3,632 shares of the Class A stock and 3,637 shares of the Class B stock are issued and outstanding and are held by numerous stockholders. The respondent holds as treasury stock 38 shares of the Class A and 90 shares of the Class B stock.

4. That on or about the 1st day of November, A. D. 1931, [fol. 560] the respondent issued a certificate for 517 shares of its Class A stock, which certificate was numbered N1220, dated November 1, 1931, and was issued in the name of Phoenix Finance System, Inc. Said 517 shares, when issued as aforesaid to Phoenix Finance System, Inc., were fully paid for and non-assessable, and said Phoenix Finance System, Inc., became the holder of record of said number of shares represented by said certificate. Phoenix Finance System, Inc., as of January 1, 1932, sold, transferred and assigned for a valuable consideration said 517 shares and the certificate representing the same unto your Orator, Phoenix Finance Corporation, and as of March 15, 1932, your Orator, Phoenix Finance Corporation, was the owner of 517 shares of the Class A stock of the respondent and held certificate #N1220 above mentioned which had been

transferred and endorsed to its as evidence of its ownership of said stock.

5. That on the 15th day of March, A. D. 1932, your Orator transferred and assigned said 517 shares and said certificate #N1220 to the respondent, Iowa-Wisconsin Bridge Company, in exchange for the issuance and delivery unto it by said respondent of \$60,390.14 in principal amount of respondent's First Mortgage Gold Bonds, 6%, dated February 1, 1932, issued under a Deed of Trust dated January 1, 1932, between Iowa-Wisconsin Bridge Company and Bechtel Trust Company, as Trustee. Said bonds were issued in the form of bearer bonds. At said time your Orator also gave Iowa-Wisconsin Bridge Company a credit of \$109.86 so that a total of \$60,500 in principal amount of said bonds could be issued unto it.

6. The form of said exchange was that of a purchase from your Orator by said Iowa-Wisconsin Bridge Company of said 517 shares of its Class A stock and the consideration for said purchase was the issuance and delivery unto your Orator of the bonds of Iowa-Wisconsin Bridge Company as aforesaid.

7. That on the 15th day of March, A. D. 1932, when said purported purchase and sale took place as aforesaid, where-[fol. 561] by your Orator sought to sell and the respondent sought to purchase 517 shares of the Class B stock of the respondent from your Orator in consideration of the issuance of said bonds of the respondent, there was an impairment of the capital of said respondent and by virtue of said attempted purchase and sale the capital of the respondent was further impaired.

8. Your Orator has been advised and informed and believes and therefore avers that under and pursuant to the provisions of Section 19 of the Delaware Corporation Law the sale by it as aforesaid of said 517 shares of the Class A stock of respondent to the respondent in consideration of the issuance and delivery by the respondent to your Orator of said bonds as aforesaid, was invalid and void. Your Orator further says that said respondent, Iowa-Wisconsin Bridge Company, has refused to recognize said purchase and sale as having been a valid transaction and has refused

to recognize that said bonds held by your Orator are valid and enforceable obligations of said respondent.

9. The respondent made two semi-annual payments of interest upon said bonds, namely, on August 1, 1932, and on February 1, 1933, but has made no further or other payments of interest to your Orator and has refused to pay to your Orator the principal amount with interest now due and payable upon said bonds. The sums received by your Orator for said two semi-annual interest payments came from funds which your Orator advanced unto the respondent and which have not been repaid unto your Orator.

10. Your Orator says that by virtue of said attempted purchase and sale having been invalid and void, it has at all times continued as a stockholder owning said 517 shares of the Class A stock of the respondent. After your Orator transferred and delivered said certificate #N1220 to the respondent, the respondent caused the same to be cancelled and issued in place thereof certificate #N1239 dated March 15, 1932, for said 517 shares of the Class A Stock [fol. 562] and issued the same in the name of the respondent, and thereafter retained the same and still holds the same as treasury stock.

11. Your Orator has made a demand upon the respondent for the delivery unto your Orator of a certificate for said 517 shares, but the respondent has refused to deliver a certificate for said number of shares unto your Orator or to register your Orator on its books as the owner of said 517 shares.

12. Your Orator hereby offers to bring into Court and surrender for delivery to the respondent \$60,390.14 in principal amount of respondent's First Mortgage Gold Bonds, 6%, dated February 1, 1932, issued by Iowa-Wisconsin Bridge Company as aforesaid, upon said respondent registering it as the holder of said 517 shares upon the books of respondent and issuing unto it a certificate for said 517 shares.

Wherefore, your orator prays as follows:

(1) That a subpoena may issue directed to said respondent requiring it to appear and answer this bill of complaint.

(2) That a decree be entered herein directing the respondent to register your Orator, Phoenix Finance Corporation, upon its books and records as the owner of the 517 shares of the Class A stock of the respondent above mentioned and to issue and deliver unto your Orator a certificate for said shares.

(3) That your Orator may have such further and other relief as the nature of the case may require and to your Honor may seem equitable and proper.

**PHOENIX FINANCE CORPORATION,**  
By Dee E. Renshaw, Vice-President,  
(Corporate Seal)

Attest: **DEE E. RENSHAW, Vice-Pres.**

**ARTHUR G. LOGAN,**  
**MARVEL, MORFORD & LOGAN,**  
Solicitors for Complainant.

State of Florida,  
County of St. Lucie.—ss.:

Be It Remembered that on this 30th day of September, A. D. 1938, personally appeared before me, the subscriber, [fol. 563] a Notary Public for the State and County aforesaid, Dee E. Renshaw, who being by me first duly sworn according to law, did depose and say:

That he is Vice-President of Phoenix Finance Corporation, the complainant named in the foregoing bill of complaint; that he has read the foregoing bill of complaint and knows the contents thereof; that what is set forth in said bill of complaint, so far as the same relates to his own act and deed, or to the act and deed of said complainant, is true, and so far as the same relates to the act and deed of any other person or persons he believes the same to be true; that he has executed the foregoing bill of complaint on behalf of the corporation pursuant to authority of the Board of Directors.

**DEE E. RENSHAW.**

Sworn to and subscribed before me the day and year aforesaid.

E. S. WILLES, Notary Public,  
Notary Public, State of  
Florida at Large.

(Notarial Seal)

My Commission Expires Jan. 15, 1939.

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February 20, A. D. 1939—Subpoena issued and delivered to the Sheriff of New Castle County for service; the said Sheriff subsequently returning the same, marked as follows:

“Summoned Iowa-Wisconsin Bridge Company, a corporation of the State of Delaware, by serving the within writ and delivering a copy thereof personally to Alfred Jervis, Secretary of Corporation Trust Company, Corporate resident agent for said Iowa-Wisconsin Bridge Company, a corporation as aforesaid, February 20th, 1939.

So. Ans. SAMUEL M. FORD,  
Sheriff.”

February 25, A. D. 1939—Iowa-Wisconsin Bridge Company appears thru its solicitor Daniel F. Wolcott, Esquire.

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March 9, A. D. 1939—Motion for extension of time for answer, etc. filed, which said motion reads as follows:

Now, comes Iowa-Wisconsin Bridge Company, the above named defendant, by Daniel F. Wolcott, its solicitor, and moves the Court that the time within which the said defendant must plead answer or demurrer to the Bill of Complaint filed herein be extended to and including the 23rd day of March, A. D. 1939.

DANIEL F. WOLCOTT,  
Solicitor for Defendant.

[fol. 564] Upon which motion the following order was made by the Chancellor:

And Now, to-wit, this 9th day of March, A. D. 1939, the foregoing application of Iowa-Wisconsin Bridge Company,



having been presented to and considered by the Court upon motion of Daniel F. Wolcott, Solicitor for the defendant,

It Is Ordered that the time within which the Iowa-Wisconsin Bridge Company, the defendant herein, must plead answer or demurrer to the Bill of Complaint filed herein, is extended to and including the 23rd day of March, A. D. 1939.

W. W. HARRINGTON,  
Chancellor.

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March 20, 1939—Answer filed, which said answer is in words and figures as follows, to-wit:

To the Chancellor of the State of Delaware:

In answer to petitioner's complaint, the respondent states:

I. Respondent admits that Phoenix Finance Corporation is incorporated under the laws of Delaware, but states that as to when it was incorporated it has neither knowledge nor information sufficient to form a belief and therefore asks that complainant be required to make strict proof thereof.

II. Respondent admits paragraph two of the complaint.

III. Answering paragraph three of the complaint the respondent admits that the authorized capital stock of the Iowa-Wisconsin Bridge Company is as alleged, and that the voting rights are as alleged, and that the outstanding stock is held by numerous stockholders, but denies the other allegations of said paragraph and respondent alleges that, as shown by the stock ledger of the Iowa-Wisconsin Bridge Company, there is outstanding 3663 shares of Class B stock of which 90 shares are in the treasury of the Iowa-Wisconsin Bridge Company issued to it, and 3670½ shares of Class A stock of which 555½ shares are in the treasury issued to the Iowa-Wisconsin Bridge Company.

IV. Answering paragraphs four, five, six and seven, [fol. 565] the respondent denies the allegations thereof and further answering said paragraphs states:

(a) That the Articles of Incorporation of the Iowa-Wisconsin Bridge Company at the times hereinafter mentioned contained the following provisions with respect to the stock, to-wit:

"The total number of shares of stock which the corporation shall have authority to issue is 7500, of which 3750 shares of the par value of \$100 each, amounting in the aggregate to \$375,000 shall be Class A stock, and of which 3750 shares without par value shall be Class B stock. Class B stock may be issued from time to time for such consideration as may be fixed by the Board of Directors.

"A statement of the designations, powers preferences and rights, and the qualifications, limitations of restrictions thereof, in respect of the Class A stock and Class B stock, are as follows:

"The holders of Class A stock shall be entitled to receive, when and as declared by the Board of Directors of the corporation out of the net assets in excess of capital or net profits as permitted by law, preferential dividends at the rate of \$6.00 per annum, and no more, except as hereinafter provided, which said dividends shall be payable annually, semi-annually, or quarterly, on such days as may be determined by the Board of Directors, before any dividend shall be declared or paid upon, or set apart for, Class B stock. Such dividends upon Class A stock shall be cumulative.

"Whenever the dividend above provided for upon the Class A stock shall have been paid or declared, or a sum sufficient for the payment thereof set apart, dividends may be declared by the Board of Directors out of the remainder of the net assets in excess of capital or from net profits available for dividends, in the following manner: Class B stock shall receive a dividend of \$6.00 on each share, and thereafter Class A stock and Class B stock shall participate alike in the maximum amount of \$4.00 per share, making a total aggregate amount to which the Class A stock might become entitled of \$10.00 per share.

"Whenever the dividends above provided for shall have been paid or declared, or a sum sufficient for the payment thereof set apart, further dividends upon the Class B stock

may be declared by the Board of Directors out of the remainder of the net assets in excess of capital or from net profits available for dividends, and the holders of Class A stock shall not be entitled to participate in any of such dividends. All dividends on Class B stock and all dividends on Class A stock, except the initial \$6.00 per share on the Class ( . . . ) stock shall be non-cumulative.

“The Class A stock may be redeemed, in whole or in part, on any dividend date at the option of the corporation, to be exercised by its Board of Directors, at \$105.00 per share, plus all accrued dividends.

[fol. 566] “If less than all shares of Class A stock are to be redeemed, the shares to be redeemed shall be selected by lot or pro rata, as the Board of Directors shall determine. Notice of the intention of the corporation to redeem shares of Class A stock shall be mailed at least thirty (30) days before the date of redemption to each holder of record of the shares to be redeemed at his last known address as shown by the corporation’s records. At any time after such notice has been mailed as aforesaid, the corporation may deposit the aggregate redemption price with any bank or trust company in the City of Lansing, Iowa, named in such notice, payable in the amounts aforesaid to the respective holders of the shares so to be redeemed, on endorsement and surrender of their certificates, and thereupon such holders shall cease to be stockholders with respect to said shares, and from and after the making of such deposit said holders shall have no interest in or claim against the corporation with respect to such shares and shall be entitled only to receive said moneys from said bank or trust company without interest. The corporation may also purchase shares for redemption at not exceeding the redemption price above specified.

“Any Class A stock redeemed or purchased for redemption under any provision hereof, or otherwise, shall be cancelled and not reissued.

“In the event of the dissolution, liquidation, or winding up of the corporation, whether voluntary or involuntary, the holders of Class A stock shall be entitled to receive and be paid \$105.00 a share, before any distribution is made

to the holders of Class B stock, but shall not be entitled to share further in the assets of the corporation or the proceeds of liquidation. The remaining assets or proceeds of liquidation shall be distributed among the holders of Class B stock.

“The holders of the Class A stock as such, shall have no right whatsoever to any stock dividends which may be declared or to subscribe for any new issue of stock or increased stock of whatever class, or securities convertible into stock, or warrants, or rights to purchase stock which may now or hereafter be authorized or issued.

“So long as any of the Class A stock shall be outstanding, the corporation shall not (except for the purpose of redeeming all of the Class A stock) unless with the affirmative vote or written consent of the holders of at least two-thirds in amount of the then outstanding Class A stock:

“(a) Consolidate with any other corporation, or sell, lease, exchange, or otherwise dispose of all, or substantially all, of the property and business of the corporation; provided, however, that the corporation may consolidate with any other corporation, or sell, lease, exchange, or otherwise dispose of all, or substantially all, of its property and business without the vote or written consent of the holders of two-thirds in amount of the outstanding Class A stock, by paying to the holders of the Class A stock who shall not vote in favor of any such transaction, or who shall not consent thereto, the sum of \$105.00 per share.

“(b) Increase the authorized amount of Class A stock or create any stock (or security convertible into stock) having any preference or priority over or equality with Class A stock.

[fol. 567] “(c) Guarantee the payment of obligations or stock of other corporations (except obligations of subsidiary corporations incurred in the usual course of business).

“(d) Alter, amend or repeal any of the provisions of the Certificate of Incorporation which are protective of the Class A stock.

"The holders of the Class A stock shall have [not] voting power, nor shall they participate in the management and control of the corporation, all voting rights being vested exclusively in the holders of Class B stock, nor shall the holders of the Class A stock be entitled to notice of meetings of stockholders except as may be otherwise provided by the laws of the State of Delaware."

(b) That the Iowa-Wisconsin Bridge Company owns an interstate bridge over the Mississippi River at Lansing, Iowa, between Lansing, Iowa and DeSoto, Wisconsin.

(c) That on or about November 1930 and at the times hereinafter mentioned John A. Thompson, A. B. Wilder, Emory H. English and others associated with them obtained the control of and dominated the Iowa-Wisconsin Bridge Company and its board of directors.

(d) That on or about the month of November 1930 and at all times hereinafter mentioned John A. Thompson, A. B. Wilder, Emory H. English and those associated with them, owned the majority of the capital stock of and controlled the Phoenix Finance System, Inc., a Delaware corporation, and its board of directors, and its subsidiary, Thompson & Company, a Delaware corporation.

(e) That the said Thompson fraudulently conspired with others, who were officers and directors of the bridge company and also officers and directors of the Phoenix Finance System, Inc., and planned and schemed to acquire the ownership of the property of the bridge company to the exclusion of the bridge company and its stockholders.

(f) That in October 1930 the grading and sub-structure of the interstate bridge of the Iowa-Wisconsin Bridge Company were nearly completed. The work had been financed through the sale of bridge company stock. No contract had been let for the erection of the super-structure. On November 11, 1930 a contract was executed between John W. Shaffer & Co. by John W. Shaffer, President, and Iowa-Wisconsin Bridge Company, by John A. Thompson, its president, by the terms of which John W. Shaffer and Company agreed to furnish the material and complete the super-structure of the bridge for \$10,000 cash and 3200 shares of the capital stock of the

Iowa-Wisconsin Bridge Company, with a provision for extras, which were required to be ordered in writing; the work was to proceed with sufficient dispatch that the bridge would be open for traffic by March 10th, 1931. The contractor agreed to furnish a surety bond at the expense of the owner. Subsequently, Thompson waived the giving of the surety bond. John W. Shaffer and Company sublet the contract for the steel to McClintic Marshall and Company, the construction work to the Industrial Contracting Company.

(g) In November 1930, immediately after the issuance of said 3200 shares of stock to Shaffer & Company, the latter company sold said stock to Thompson & Company and received the promissory note of Thompson & Company for \$224,000.00 therefor, said Thompson & Company being a wholly owned subsidiary of Phoenix Finance System, Inc.

(h) That on or about the 10th day of November 1930 the said Thompson dominating and controlling the bridge company caused 140 shares of its capital stock to be issued to the Phoenix Finance System, Inc. without lawful consideration, and actually sold by it prior to November 9th.

(i) That on or about February 5th, 1931 the said Thompson engaged Elliott-Rodgerson & Co., Minneapolis, Minnesota, brokers to sell stock purchased by Thompson & Company from Shaffer & Company, and personally and on behalf of Phoenix Finance System, Inc. represented and assured said brokers that \$750,000.00 would be the entire capitalization of the bridge company and that no mortgage would be placed upon the bridge and no bonds would be issued; that relying on these representations which were passed to the public, Elliott-Rodgerson & Co. sold to [fol. 569] the public about \$100,000.00 worth of bridge company stock at \$100 per share; and that the stock was purchased by present stockholders of the bridge company on said basis relying on said representations.

(j) In March 1931 said Thompson and Phoenix Finance System, Inc., dominating and controlling the bridge company and its directors, so manipulated the affairs of the bridge company that a purported resolution was passed at directors' meeting of the bridge company, providing for



the issuance of a \$50,000 mortgage to the Phoenix Finance System, Inc. on the properties of the Iowa-Wisconsin Bridge Company, which resolution contained the false and fraudulent recital, that funds received from sale of stock had been inadequate to properly finance the rapid completion of the bridge. Whereas, the bridge company then had nothing to do with the sale of stock and it had delivered to John W. Shaffer & Company \$320,000.00 of its stock and \$10,000.00 in cash for the completion of the bridge. That pursuant to such resolution the mortgage was executed to the Phoenix Finance System, Inc. for \$50,000.00 signed on behalf of the bridge company by A. B. Wilder, who was then also an officer and director of the Phoenix Finance System, Inc.; that in truth and in fact no indebtedness of the said bridge company to the said Phoenix Finance System, Inc. existed and the said mortgage was without consideration; that at said time said Thompson caused to be made entries on the books of the bridge company, purporting to show the receipt of \$50,000.00 in cash, whereas, in truth and in fact, said amount nor no part thereof was received by the bridge company; that the said Thompson caused entries to be made on the books of the bridge company as though the following payments were made; \$25,000 on sub-structure; \$5000.00 on grading; \$5000.00 on engineering, when in truth and in fact no such payments were made in any form, and also caused entries to be made on the bridge company's books as though the bridge company owed \$15,000.00 to Thompson [fol. 570] & Company, wholly owned subsidiary of the Phoenix Finance System, Inc., when in truth and in fact, there was nothing due from the bridge company to Thompson & Company or the Phoenix Finance System, Inc., but on the contrary there was due over \$3000.00 from Thompson & Company to the bridge company, and the aforesaid entries were false. Checks of \$35,000 and \$10,000 were drawn by the Phoenix Finance System, Inc., endorsed and returned to the account of the Phoenix Finance System, Inc.

(k) That on August 6th 1931 John W. Shaffer & Company owed Industrial Contracting Company \$10,000.00; McClintic-Marshall Company \$11,262.71; Kramer & Hogg, amount then in dispute; that Shaffer & Company also

claimed to be entitled to payment for certain extras, labor, materials and commission; that there were also matters in dispute between the bridge company and Shaffer & Company with reference to the bridge contracts; that to make a complete settlement, a stated settlement contract was made on August 6th 1931 between the bridge company, as [part] of the first part, and John W. Shaffer, Vernon W. O'Connor, John W. Shaffer & Company and Standard Shares Holding Company, as parties of the second part, which was executed on behalf of the bridge company by John A. Thompson as president and which provided:

"That the bridge company transferred to the other parties to the contract 120 shares of its common stock and 80 shares of its preferred stock and certain other securities which were of the value of \$2475.00, and to pay Kramer & Hogg the balance due them. That the second parties (Shaffer, O'Connor, Standard Shares Holding Company and Shaffer & Company) accept such consideration as full and complete settlement of all sums due them and/or any of them, and full satisfaction and stated settlement of any and all claims of all kinds, whatsoever arising out of any contract or other considerations between the parties hereto and/or pertaining in any way to said toll bridge and second parties separately and jointly hereby release said Iowa-Wisconsin Bridge Company fully and completely. Second parties hereby specially acknowledge receipt of full payment of all engineering, designing and building of said bridge and for all materials, services and all other things pertaining to said bridge."

That the Iowa-Wisconsin Bridge Company, pursuant to this contract delivered 200 shares of its stock of the par value of \$20,000. and other securities of the value of \$2475.00; that about the same time John W. Shaffer agreed to and did turn over to Thompson of Thompson & Company [fol. 571] pany and president of the Phoenix Finance System, Inc. \$10,000 of the bridge company stock (100 shares received by Shaffer) and Thompson & Company and Thompson, president of Phoenix Finance System, Inc., agreed to pay the \$10,000 owing by Shaffer & Company to the Industrial Contract Company and the \$11,262.71 owing by Shaffer & Company to McClintic Marshall & Company.

That neither the Industrial Contracting Company nor the McClintic Marshall Company had any contract with the bridge company nor was the bridge company indebted to them in any way.

(1) That on the 10th day of November 1931 at a so-called re-convened meeting of the board of directors of the bridge company, controlled by said Thompson-Phoenix Finance System, Inc., and at said meeting, as a part of the fraudulent scheme, plan and conspiracy, it was represented by said Thompson that the bridge company owed the following items:

Phoenix Finance System, Inc. note secured by mortgage for \$50,000.00 and interest;

Claim of McClintic Marshall & Company, steel \$12,000.00;

Claims Phoenix Finance System, Inc. for money advanced to Industrial Contracting Company for labor and materials, \$10,000.00; and

Other obligations aggregating \$40,000.00.

That at this meeting resolutions were adopted providing for a bond issue of \$200,000.00, for a stockholders meeting to consider the bond issue; for the delivery of the bonds to pay the \$50,000 mortgage and for the payment of other alleged claims.

(m) That on the 11th day of November 1931 a letter prepared at the dictation of John A. Thompson and signed by Oscar R. Thorson, Secretary-Treasurer of the bridge company, under said Thompson's direction, was sent to the stockholders of the said bridge company; that in this letter it was falsely and fraudulently represented to the stockholders of the bridge company, for the purpose of inducing them to approve the proposed bond issue of \$200,000.00 and forward proxies to aid Thompson and his associates, as follows:

[fol. 572] (1) "That in October 1930 negotiations were opened with Phoenix Finance System, Inc. to lend its aid in arranging for the financing of the completion of the bridge and to save the project from absolute failure."

That said statement was false in that no request was made of the Phoenix Finance System, Inc. to aid in arranging for financing of the completion of the bridge and that such aid was not necessary to save the project from absolute failure.

(2) "Phoenix Finance System, Inc. entered into an agreement with the bridge company and John W. Shaffer and Company, contractors, on November 10, 1930, under the terms of which Phoenix Finance System, Inc. agreed to guarantee payment to the steel company, which was furnishing the steel for the bridge, and to Industrial Contracting Company, contractors, with the understanding that the Phoenix would be repaid by the bridge company, on demand, for any such advances that might be required to be made by it temporarily in order to fulfill the guarantee and to permit the continuation of work on the bridge."

That these statements were false, and that the Phoenix Finance System, Inc., had represented in a letter to Elliott-Rodgers & Company under date, February 5th, 1931: "The Phoenix Finance System, Inc. of Des Moines, Iowa has unconditionally guaranteed the payments on the steel as purchased from McClintic Marshall Company, Chicago, Illinois, the same being all of the steel required in the construction of the Blackhawk bridge, also further guaranteeing all the payments for the Industrial Contracting Company of the erection of said steel, and all details in connection with it and outside investors have the further assurance of the completion in the fact that the Phoenix Finance System, Inc. has unconditionally guaranteed to pay for the completion of this bridge." And in that it was not disclosed that the Phoenix Finance System, Inc. had received \$14,000.00 of bridge company stock without proper legal consideration.

(3) "The sale of stock to the public showed no improvement and in order that the work on the bridge might not be delayed, Phoenix Finance System, Inc. made [substantially] advances."

These statements were false in the following respects: The sale of stock to the public was a matter of no interest to [fol. 573] the bridge company. It had fully paid for the

completion of the bridge and the sale of stock was entirely a private matter of Thompson & Company, the purchasers of the stock from Shaffer & Company. There were no advances made by Phoenix Finance System, Inc. in order that the work on the bridge might not be delayed. Even the claimed payment to Industrial Contracting Company was made after the Industrial Contracting Company had completed the work on the super-structure, and was made on an obligation not owed by the bridge company.

(4) "The construction of the bridge went forward without delay and the cash required for material and labor was advanced regularly by the Phoenix Company".

That this statement was false in that the money paid for material and labor was paid by John W. Shaffer & Company from sums that were due it from Thompson & Company on the \$224,000.00 note.

(5) There has been advanced by the Phoenix Finance System, Inc. to the bridge company in the payment of bills for labor and material to complete the bridge, approximately \$70,000.00, \$50,000.00 of which is secured by mortgage, which was due September 10, 1931."

This statement was false and fraudulent in that there was no valid mortgage of \$50,000 held by the Phoenix Finance System, Inc.; that neither \$50,000.00 nor any other sum was advanced or paid by the Phoenix Finance System, Inc. for the benefit of the bridge company at the time of the execution of the mortgage or at any other time. That no sums had been advanced by the Phoenix Finance System, Inc. in the payment of bills for labor and materials to complete the bridge owed by the Iowa-Wisconsin Bridge Company.

(6) "In addition to the \$70,000 which has been advanced by the Phoenix Finance System, Inc. there will be immediately required the further sum of \$50000 to complete the payment of outstanding obligations."

This statement was false, fraudulent and untrue, because under the terms of the settlement agreement with Shaffer, a complete settlement had been made for all obligations of the bridge company, save the amount due Kramer &



[fol. 574] Hogg, and Shaffer & Company had been paid therefor the sum of \$22,475.00 in stock and securities.

(7) "The board of directors was confronted with the problem of raising additional funds with which to satisfy the claims of Kramer & Hogg and McClintic-Marshall & Company in order to prevent threatened liens and litigation to collect these amounts."

That this statement was false and fraudulent in that there was no obligation on the part of the bridge company to pay the claim of McClintic Marshall & Company in view of the settlement made with Shaffer & Company. The Phoenix Finance System, Inc. had guaranteed the payment of the McClintic Marshall & Company sub-contract, had the primary obligation of Shaffer & Company to pay the claim, and through its president, John A. Thompson, in consideration of 100 shares of bridge company stock, received from Shaffer & Company, had released and discharged Shaffer & Company from such payment and assumed the same, and the bridge company was not liable for the obligation.

(8) "It was never intended that this cash advance by the Phoenix Finance System, Inc. to the bridge company should be of a permanent nature and it must now be repaid."

That this statement was false and fraudulent in that cash had not been advanced by the Phoenix Finance System, Inc. to the bridge company.

(n) That following the aforesaid letter, a notice of a proposed stockholders meeting for December 22, 1931 with form of proxy running to Emory H. English, Oscar R. Thorson, J. H. Thompson, enclosed on stationery of and with postage furnished by the bridge company, was sent to the Class B stockholders, voting stockholders. The fraudulent statements contained in the letter of November 11, 1931 were not corrected, nor was any true information given with respect thereto. The notice called for a special meeting of holders of Class B voting common stock to consider and authorize the directors to borrow, not to exceed \$200,000.00; to authorize the issuance of mortgage bonds, not to exceed that amount, and to provide the terms



[fol. 575] and conditions under which such bonds should be issued; to authorize the directors to convey to a named trustee by mortgage deed of trust all of the property and assets of the company to secure the payment of principal and interest of such bonds; to authorize the directors to sell, pledge or otherwise dispose of such bonds and to apply the proceeds thereof to such corporate purposes as the board might from time to time determine. That in response to the letter of November 11, 1931 and the notice of November 20, 1931 the proxies of stockholders were procured, reading to Oscar R. Thorson, Emory H. English and J. H. Thompson, Emory H. English and Oscar R. Thorson being the controlled representatives of John A. Thompson. These proxies voted by Thorson in unison with the stock and proxies held by John A. Thompson, controlled and dominated the stockholders' meeting held on December 22, 1931, as a part of the scheme, plan and conspiracy, and at this meeting there was adopted a resolution authorizing the issuance of first mortgage bonds in the aggregate sum of \$200,000.00, and the conveyance by mortgage deed of trust on all the property of the bridge company to secure the payment of such bonds. The resolutions relating to the bond issue was voted and carried by the votes of said John A. Thompson and his controlled associates. The resolution as presented at the meeting contained the following false preambles and representations advanced as reasons for voting in favor of the bond issue.

(1) "Whereas, it was originally contemplated that the funds necessary to construct the Blackhawk Bridge would be acquired through the sale of capital stock, and whereas, a substantial amount of funds were acquired in that manner, but due to a change in general economic conditions it developed that it was impossible to realize sufficient funds from that source as rapidly as the same were required to complete the bridge project economically."

That this statement was false. The bridge company had paid Shaffer & Company \$10,000 in cash and delivered \$320,000 of its stock for the completion of the Bridge; this stock had been sold by Shaffer & Company to Thompson & Company, and the bridge company was not concerned

in its sale. These facts were concealed from the stockholders.

[fol. 576] (2) "Whereas, it was necessary for the company to borrow funds to expedite the completion of said bridge, and avoid disaster, and whereas, the amount of stock required and the cost of building that bridge was greatly in excess of the cash originally estimated."

That these statements were false in that the bridge company had made arrangements with Shaffer & Company for the building of the bridge as above stated. The cost of steel and of building the bridge was not greatly in excess of the amount originally estimated, the contract of Industrial Contracting Company running about \$7,000.00 below its original estimate, while the sub-structure contract between John W. Shaffer & Company and McClintic Marshall Company ran about \$10,000 more than the amount estimated between those two companies. That the statements were further false in view of the settlement contract which had been made in August, whereby John W. Shaffer & Company received \$20,000.00 of bridge company stock and \$2475.00 of other securities of the bridge company in full satisfaction and payment of all such extras; that this fact was fraudulently concealed from the stockholders present at the meeting. The Statement was further false and fraudulent because not only was it not necessary for the bridge company to borrow funds to expedite the completion of said bridge and to avoid disaster, but in fact the bridge company had not borrowed any funds from any source.

(3) "Whereas, there still remains unsold capital stock of the bridge company in the approximate amount of \$120,000."

This statement was false in that the bridge company did not have remaining in the treasury such amount of stock.

(4) "Whereas, it now becomes necessary for the company to raise sufficient funds with which to repay loans made to the Company by Phoenix Finance System, Inc., a greater portion of which is secured by mortgage on the property of the company, and which is now past due."

This statement was false and fraudulent and made with fraudulent intent, in that the Phoenix Finance System, Inc. did not hold a bona-fide mortgage on the property of the bridge company and had not made any loans or advanced funds to pay obligations of the bridge company and in that [fol. 577] the bridge company did not owe the Industrial Contracting Company nor McClintic-Marshall & Company any amount paid to them by the Phoenix Finance System, Inc., its subsidiary, Thompson & Company, and John A. Thompson to make the payments.

(5) "Whereas, the company for these and other corporate purpose will be presently required to borrow not exceeding \$100,000.00 to discharge these obligations and others which it is contemplated will presently arise."

This statement was false and fraudulent in that the company did not owe obligations which required it to borrow any such amount.

(6) "Whereas, it is anticipated that additional funds not to exceed \$100,000.00 may from time to time be required to discharge present or future obligations of the bridge company to provide for the payment of pavement and improvements of the dike and to care for flood conditions and other emergencies."

That this statement was false, fraudulent and untrue. The bridge had already been completed and no such sum was needed for dikes or other emergencies, nor was there any intention on the part of said Thompson or his associates to make any such use, as was promptly illustrated by their fraudulent exchange of bonds for the stock held by the Phoenix Finance System, Inc., as hereinafter alleged.

(7) Whereas, the company finds itself unable to acquire funds for these purposes except through the creation and issuance of bonds secured by mortgage deed of trust covering the assets, property and income of the property, and whereas the interests of the stockholders will be jeopardized unless such funds or a part thereof are made available within a reasonable time."

That such statements were false and fraudulent, in that the company did not owe obligations for which it needed any

such funds. That said meeting was wholly controlled and dominated by John A. Thompson and his associates, officers and directors of the Phoenix Finance System, Inc.; that other stockholders relying on the false and fraudulent statements contained in the letter and notice, and believing them to be true, sent proxies as forwarded by Thompson and Thorson, and some minority stockholders voted against said resolution. That independent stockholders at the meeting relying on the false representations hereinbefore quoted, believing them to be true and not knowing the true [fol. 578] facts, voted for the resolutions, and did so because of the fraudulent representations and concealments.

(o) That on December 22, 1931, immediately following such special meeting of the voting common stockholders of the corporation, a directors meeting was held, dominated and controlled by John A. Thompson, at which meeting a purported resolution was passed with respect to the \$50,000.00 mortgage, and with reference to the issuance of bonds therefor, and at said meeting it was represented and claimed by said John A. Thompson that it was a valid and bona fide mortgage; that the said John A. Thompson did not disclose the fact that the alleged mortgage was not based on proper considerations and that the same was fraudulent. Such independent directors as were present, voted for the resolution in ignorance of the true facts with reference to the mortgage. That the resolutions of the meeting of the board held on November 10, 1931, were purportedly ratified, and the officers were directed and authorized and empowered to take any action necessary to carry them out, and the officers specifically directed to execute the mortgage deed of trust, which was presented at the meeting.

(p) That on January 5, 1932, a directors meeting of the Iowa-Wisconsin Bridge Company was held, at which were present four Thompson-controlled directors, Emory H. English, Oscar R. Thorson, A. B. Wilder and M. White, and no others. At this meeting these four directors, two of whom were officers, and one a director of the Phoenix Finance System, Inc., passed a resolution to purchase from the Phoenix Finance System, Inc., 517 shares of Class A preferred stock for \$51,700.00 with interest from January

1st, 1931, and to deliver Class B bonds of the bridge company in such face amount as would on the basis of 8% yield \$51,700 in interest, or \$60,500.00 of bonds. These bonds were later issued. The 517 shares of stock, being certificate N1220 issued in the name of Phoenix Finance System, Inc. turned in by it in this transaction consisted of [fol. 579] 477 shares which had originally been issued to Shaffer & Company as a part of the payment on the superstructure and sold to Thompson & Company at \$70.00 per share, and had been transferred to the Phoenix Finance System, Inc., under date November 1st, 1931 and 40 shares which had been purchased by John A. Thompson from the bridge company on November 5, 1930 and transferred to Phoenix Finance System, Inc. on November 1st, 1931, and on such 40 shares said Thompson did wrongfully pay a commission of 15% to Thompson & Company. That this action was a part of the fraudulent scheme, plan and conspiracy. It was falsely and fraudulently stated in the preambles of the resolution;

“Whereas, it again became [evidence] to the officers and directors of the company that there was a probability that the construction work would have to be abandoned because of lack of funds, with the attendant sacrifice of funds already [expensed] the company through its directors, solicited the Phoenix Finance System, Inc., and its affiliated corporations to provide and/or guarantee the necessary capital, and pursuant to these negotiations, Phoenix Finance System, Inc., agreed to purchase from the company a substantial amount of its preferred and common stock upon the express promise and agreement of the company that it would save the said Phoenix Finance System, Inc. free and harmless from any loss it might sustain on account thereof, and upon the express promise and guarantee that in the event the said Phoenix Finance System, Inc. was unable to sell the said stock to the public within a reasonable time, the company would, upon request of said Phoenix Finance System, Inc., purchase the same.”

That the said statements were false and fraudulent in that there was not any previous motion or resolution passed by either the directors or stockholders, authorizing the Phoenix Finance System, Inc. to act as fiscal agents for the bridge



company, nor did it act as such fiscal agent. It did not sell stock for the bridge company. And in that there was no agreement on the part of the bridge company to repurchase any stock from the Phoenix Finance System, Inc.

That neither on the 5th day of January, 1932, nor at any time thereafter did the Iowa-Wisconsin Bridge Company have any surplus with which to make a repurchase of its stock. When the attempted purchase of Phoenix Finance System, Inc. stock was made the Articles of Incorporation of the bridge company contained the provisions aforesaid, and that at that time there was outstanding other Class A stock held by other stockholders, who were not given the [fol. 580] permission or opportunity to surrender Class A stock and to receive bonds, and that no notice of intention of the corporation to redeem class A stock was mailed or given to stockholders of such stock, except to Thompson and his controlled companies. That all of the Class A stock was not purchased by the bridge company at that time through the issuance of bonds or otherwise, nor was a portion of said Class A stock redeemed proportionately, nor was there any legal authorizing vote on the part of the stockholders of the bridge; that the attempted exchange of Class A stock for bonds caused an impairment of the capital. And that the said action of said Thompson-Phoenix Finance System, Inc. in the exchange of Class A stock for bonds was fraudulent and for the purpose of conferring upon himself and his company a preference over the Class A stockholders, and resulted in such unlawful preference, and was passed and brought about by the fraudulent representations, pretenses and tokens aforesaid, which were made with fraudulent intent to cheat and defraud [and] bridge company and its stockholders and as a part of the fraudulent scheme, plan and conspiracy.

(q) That at a reconvened meeting of directors of the Iowa-Wisconsin Bridge Company held on the 7th day of March, 1932, which was dominated and controlled by said Thompson and Phoenix Finance System, Inc., in furtherance of the scheme, plan and conspiracy, a purported resolution was passed, authorizing and directing the secretary-treasurer to deliver to said Phoenix Finance System, Inc. Class B bonds of the bridge company in the sum of \$60,-



500.00 and to credit on the books \$109.86 to the Phoenix Finance System, Inc. and to receive from the Phoenix Finance System, Inc. certificate of said 517 shares of Class A stock of the company properly assigned and as a part of such plan, scheme and conspiracy, such bonds were delivered to the Phoenix Finance System, Inc. and said 517 shares of Class A stock represented by Certificate N1220 assigned in blank, received from it and cancelled, and on the 15th day of March, 1932, certificate N1239 for 517 shares was issued to the Iowa-Wisconsin Bridge Company. And [fol. 581] at said meeting a purported resolution was adopted for the delivery of \$97,000 of Class A bonds of the bridge company to the Phoenix Finance System, Inc. for the purported mortgage of \$50,000 and interest thereon and \$10,000 Industrial Contracting Company; \$9,000.00 to Kramer & Hogg and \$11,262.71 to McClintic Marshall & Company, with interest on such items amounting to \$83,811.29, and with discount on the bonds of \$12,727.31, making a purported total of \$69,538.58 and a purported balance of \$461.42 being charged to the Phoenix Finance System, Inc. on the books of the bridge company, making a total of \$97,000.00. That the aforesaid \$10,000 to the Industrial Contracting Company was neither due from nor paid by the bridge company and the bridge company did not owe the \$11,262.71 to McClintic-Marshall Company; that said two items were fully covered and disposed of by the bridge company in its settlement with John W. Shaffer & Company and were items which Thompson & Company, subsidiary of Phoenix Finance System, Inc., had undertaken to pay, and the Iowa-Wisconsin Bridge Company did not owe the alleged mortgage of \$50,000.00 with interest thereon, but on the contrary the same was wholly fraudulent.

(r) That subsequently at a director's meeting of the Iowa-Wisconsin Bridge Company held on the 7th day of July, 1933, controlled and dominated by the said John A. Thompson and his associates, a purported resolution was passed for the delivery of \$20,100.00 Class B Bonds to the Phoenix Finance Corporation without proper consideration.

(s) That the Phoenix Finance Corporation at the time of its organization was officered and controlled by the same officers as was the Phoenix Finance System, Inc. and had

full notice of the facts and circumstances surrounding the bond issue of the Iowa-Wisconsin Bridge Company and assumed the entire fruits and activities of its predecessor, Phoenix Finance System, Inc., and proceeded to carry on with the same notice and purpose, adopting all of the plans and results of its predecessor.

[fol. 582] (t) That the First Trust & Savings Bank (formerly Bechtel Trust Company) and A. H. Schubert were named as trustees in the purported deed of trust of the Iowa-Wisconsin Bridge Company, securing the aforesaid bonds; that the Phoenix Finance Corporation in furtherance of said plan, scheme and conspiracy caused a Bill of Foreclosure to be filed by said trustees on the 28th day of August 1933 in the office of the Clerk of the United States District Court in and for the Northern District of Iowa, Eastern Division, Dubuque, Iowa, for appointment of a receiver and strict foreclosure of the alleged deed of trust and bonds aforesaid of the Iowa-Wisconsin Bridge Company and praying that the bridge company and all persons claiming under it be barred and foreclosed of all equity of redemption. That the said Phoenix Finance Corporation, in furtherance of such scheme and plan undertook to save the said trustees harmless from attorneys' fees, costs and expenses connected with said cause; that by leave of court a petition of intervention was filed by stockholders of the Iowa-Wisconsin Bridge Company in said action and said action defended by the interveners, alleging in substance that at the time of the execution of the deed of trust and issuance of the bonds, the bridge company was under the control and domination of John A. Thompson and his associates who owned a controlling interest in and controlled the Phoenix Finance System, Inc. and that the aforesaid bonds were issued as a part of a fraudulent scheme, plan and conspiracy to deprive the bridge company and its stockholders of their property; that it appearing before the court that the Phoenix Finance Corporation was the holder of substantially 90% of the \$200,000 of bonds sought to be foreclosed, it on motion of interveners, was made a party co-complainant in said action. That the aforesaid \$60,500.00 Class B bonds

and 517 shares of Class A stock were involved in said action.

(u) That the petitioner, Phoenix Finance Corporation, with respect to said \$60,500.00 of bonds and 517 shares of stock aforesaid filed its Exception #4 to the Master's report, a copy of which is hereto attached, marked Exhibit "A" and made a part hereof.

[fol. 583] (v) That the United States District Court for the Northern District of Iowa heard said cause and filed its opinion, findings of fact and decree, holding that all of the bonds of the Iowa-Wisconsin Bridge Company held by the Phoenix Finance Corporation, were fraudulent and void, issued as a part of a scheme, plan and conspiracy to defraud. (Courts opinion, finding of fact and decree reported 19 Fed. Supp. 127.) That attached hereto and marked Exhibit "B" and made a part hereof is a copy of the court's final decree.

(w) That the Phoenix Finance Corporation filed a petition for rehearing in said cause in which it alleged among other things:

"As further ground for the relief herein prayed, Phoenix Finance Corporation shows to the Court that through inadvertence, oversight or misapprehension of the facts in this case, the Court invalidated \$60,500.00 of Bridge Company bonds held by Phoenix Finance Corporation, for which the last named company surrendered to the Bridge Company 517 shares of its capital stock, which was the admitted property of Phoenix at the time, and the court has wholly failed to reinvest Phoenix with this stock, but on the contrary has not alone invalidated the bonds but deprived Phoenix of the capital stock which it surrendered therefor. \* \* \*

"Third. In case rehearing is denied, the decree be so modified as to reinvest in petitioner 517 shares of A stock surrendered in exchange for bonds."

(x) That said United States District Court for the Northern District of Iowa rendered its opinion and order overruling said petition for rehearing, copy of which are hereto attached, marked Exhibits C and D.

(y) That the petitioner appealed from said decisions of the United States District Court for the Northern District of Iowa to the United States Circuit Court of Appeals, Eighth Circuit, which appeal involved said \$60,500.00 of Class B bonds of the Iowa-Wisconsin Bridge Company and the claim that the said 517 shares of stock should be re-issued. See Exhibit "E" attached hereto and made a part hereof. That said Circuit Court of Appeals denied such claims and affirmed the decision of the trial court. (98 Fed. (2nd) 416). And Petition for Writ of Certiorari to the Supreme Court of the United States was denied and the order of the Circuit Court of Appeals entered affirming the decision of the trial court.

[fol. 584] V. Answering paragraph eight of the complaint, the respondent denies the first sentence thereof and alleges that the aforesaid 517 shares of stock were cancelled when the bonds were fraudulently obtained as a part of a fraudulent scheme, plan and conspiracy, and that also the delivery of said bonds under Section #14 of Delaware Corporation Law was invalid and void.

VI. Answering paragraph 9 of the complaint, the respondent denies the allegations thereof except as herein modified and explained. The respondent alleges that it did not pay semi-annual interest on said bonds; that the petitioner and its president, John A. Thompson, dominated the bridge company and controlled its books, and went through the fiction and pretense of purportedly advancing funds to the bridge company and then paying itself such alleged interest from said funds in an attempt to create an apparent bar to the bridge company claiming or asserting said bonds were invalid and void. Respondent admits that it has refused to pay interest on said bonds.

VII. Answering paragraph ten of the complaint respondent denies the allegations thereof, except as herein after modified or explained. The respondent alleges that a certificate number N1239 was issued as above stated in this answer for 517 shares.

VIII. Answering paragraph 11 the respondent denies the same except as herein modified. The respondent alleges that the said 517 shares and all questions relating to it and the claims to right of reissue were fully litigated in the aforesaid action pending in the United States Dis-

trict Court for the Northern District of Iowa and on appeal before the United States Circuit Court of Appeals, and that petitioner therein contended that it was entitled to have said shares re-issued and respondent contended that it was not entitled to have said shares reissued; that they were used as an instrumentality to perpetrate a fraud on respondent, and that the decisions of the United States District Court for the Northern District of Iowa and the decision of the United States Circuit Court of Appeals for the Eighth Circuit and the orders and decrees rendered [fol. 585] in pursuance of such decisions, are res judicata, and that such decisions should and ought to be given full force and effect under the provisions of Article IV, Section 1, Article III, Sections 1 and 2 and Article IV, Section 2 of the Constitution of the United States; and that the petitioner is barred and estopped from maintaining this case.

IX. Answering paragraph 12 of the complaint respondent alleges that the United States District Court for the Northern District of Iowa and the United States Circuit Court of Appeals for the Eighth Circuit have held said bonds fraudulent and void and without consideration.

X. Further answering said complaint, the respondent alleges that the petitioner does not come into this court of equity with clean hands, and that by the lapse of time and laches and the Statute of Limitations, the petitioner is barred from maintaining this action.

Wherefore respondent prays that petitioner's petition be dismissed with costs and that respondent have such other and further relief as may be just and equitable.

IOWA-WISCONSIN BRIDGE  
COMPANY,

By Fred Biermann,

Vice-President.

Attest:

IRENE M. BELL,

Secretary-Treasurer.  
(Corporate Seal)

DANIEL F. WOLCOTT,  
F. A. ONTGES,

Solicitors for Respondent.

State of Iowa,  
County of Winneshiek—ss.:

Be It Remembered that on this 8th day of March, A. D. 1939, personally appeared before me, the subscribed, a Notary Public for the State and County aforesaid, Fred Biermann, who being by me first duly sworn according to law, did depose and say:

That he is Vice-President of Iowa-Wisconsin Bridge Company, the respondent named in the foregoing Answer; [fol. 586] that he has read the foregoing Answer and knows the contents thereof; that what is set forth in said Answer, so far as the same relates to his own act and deed, or to the act and deed of said respondent, is true, and so far as the same relates to the act and deed of any other person or persons he believes the same to be true; that he has executed the foregoing Answer on behalf of the corporation pursuant to authority of the Board of Directors.

FRED BIERMANN.

Sworn to and subscribed before [—] the day and year aforesaid.

(Notarial) Seal)	NAOMI O'NIEL, Notary Public in and for Winneshiek County, Iowa.
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My commission expires July 4, 1939.

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### Exhibit "A"

#### Exception No. 4

It excepts to the Master's finding in Nos. 5, 6, and 7, shown at pages 19-20 of the report, in disallowing \$60,-500.00 of bonds transferred to Phoenix, and in failing to find that said bonds were valid obligations of the bridge company

For the reason that—

1. The record discloses that these bonds took up not only the 517 shares of Class A stock which had been issued to Phoenix as collateral for money advanced, but actually paid a contracted debt of \$51,700.00, and the balance goes



to make up the \$60,500.00 and was discounted so as to make the bonds yield 8 percent. (See Exhibit 31 page 340 Par. (e) and testimony of John A. Thompson.)

The Master is in error in concluding that it was a stock retirement in discriminatory favor to shares consummatedly issued. The record discloses that Phoenix advanced \$51,700.00 of money, not for the purchase of 517 shares of stock, but the stock was issued to it to secure said advancement. It is true that said advances were made through the contractor and it is likewise true that the 517 shares were transferred through said contractor, but the Agreement, "Exhibit "E" provided:—

"In consideration of the premises and the benefits to Third Party, by reason of any endorsements or guarantees of First party, the Third party hereby agrees that in event Second party fails to pay and discharge all of the payments aforesaid and/or first party is required to advance any sums of money by reason of any endorsement or guarantee in connection with the financing of the said Black Hawk Bridge then and in that event the Third party agrees to pay to First party on demand a sum equal to the total amount due to First party from all causes in connection with said financing of said bridge."

[fol. 587] Therefore, Phoenix was entitled to be repaid for these advances plus 8% interest. This \$51,700.00 was a loan by Phoenix rather than a stock purchase.

There appears in the records of the corporation, in the Minutes of its regular-board meeting held on January 5, 1932, shown at page 338 of "Exhibit 31", the following:

Whereas, it again became evident to the officers and directors of the company that there was a probability that the construction work would have to be abandoned because of lack of funds, with the attendant sacrifice of the funds already expended, the company, through its officers, directors, and stockholders, solicited the Phoenix Finance System, Inc. and its affiliated corporations, to provide, and/or guarantee the necessary capital, and pursuant to these negotiations Phoenix Finance System, Inc. agreed to purchase from the company a substantial amount of the preferred and common stock, upon the express promise and

guaranty of the company that it would save the said Phoenix Finance System; Inc. free and harmless from any loss it might sustain on account thereof, and upon the further express promise and guaranty that in the event that said Phoenix Finance System, Inc., while it was unable to sell said capital stock to the public within a reasonable time, the company would upon request of the Phoenix Finance System, Inc. re-purchase the same; and

Whereas, in spite of its efforts, due to prevailing unfavorable economic conditions, the said Phoenix Finance System, Inc. has been unable to dispose of a substantial amount of said stock, and now owns and holds 517 shares of Class A preferred stock and 500 shares of Class B common stock; and

Whereas, the said Phoenix Finance System Inc. has now made demand upon the company to repurchase the said stock in accordance with the said agreement; and

Whereas, the company recognizes the obligation to repurchase the stock and is desirous of so doing; and

Whereas, the company has recently authorized the creation and issuance of first mortgage bonds in the principal sum of \$200,000.00, for the purchase of acquiring funds with which to discharge and satisfy its corporate obligations;

Now, therefor, be it resolved:

(a) That the company forthwith repurchase from Phoenix Finance System, Inc. 517 shares of Class A preferred stock of the company, and pay therefor to the said Phoenix Finance System, Inc. the sum of \$51,700.00, with interest thereon from January 1, 1931 at the rate of 6 per cent per annum.

(page 340)

That the president and secretary shall dispose of said bonds or any part thereof, upon such terms and conditions and at such price as to them in their absolute discretion shall be to the best interests of the company, and in such amount as may be necessary to provide funds in the sum of \$51,700.00, with which to repurchase said Class A preferred

stock of the company from the Phoenix Finance System, Inc., as herein specially provided.

[fol. 588] That the president and secretary be authorized to deliver the said bonds, or that part thereof which may be necessary to the said Phoenix Finance System, Inc., in satisfaction and payment of the company's obligation to said Phoenix Finance System, Inc., as herein provided for, in such face amount as will on the basis of an 8 per cent yield equal the sum of \$51,700.00."

At a meeting of the board of directors of the Bridge Company on March 7, 1932, the following proceedings were had, with reference to said 517 shares of stock. The record will be found at page 346 of "Exhibit 31."

"The following resolution was then offered by Mr. English, who moved its adoption:

Whereas, it has heretofore been ordered by the board of directors that the company repurchase from the Phoenix Finance System, Inc. 517 shares of Class A preferred stock of the company, for a consideration of \$51,700.00, plus interest at the rate of 6 per cent per annum from January 1, 1931 to January 31, 1932, in the amount of \$3,360.50, or a total of \$55,060.50, and by reason of the fact that the corporation is without funds with which to pay the same, and for the further reason that it is impossible to sell or dispose of said bonds at this time, that there be delivered to the said Phoenix Finance System, Inc. Series B bonds of the company in a sufficient amount to cover the same, on the basis of an 8 per cent yield "

The foregoing was unanimously adopted.

The directors present at this meeting were: Emory H. English, J. A. Thompson, M. K. Thompson, Oscar R. Thompson, H. T. Wagner, A. B. Wilder.

Testimony Outside The Corporate Records.

In connection with this transaction, Mr. Thompson testified:

"There were \$60,500 (bonds) issued to the Phoenix Finance Corporation, for funds advanced by the Phoenix Finance System, Inc. in conjunction with the building of

the bridge, the return of which fund had been guaranteed by both verbal and written contracts, and in conjunction with which 517 shares of preferred stock of the Iowa-Wisconsin Bridge Company was temporarily held by Phoenix until those funds could be repaid, with 8 percent interest."

To the same effect, see pages 188 and 229 of the same transcript. And on page 230 of the same transcript is the following:

"Q. Now \$51,700.00 that was represented by stock held by Phoenix Finance Corporation?

A. The stock was collateral connected with the transaction."

The record thus discloses that it was a liquidation of a valid obligation of the bridge company to Phoenix, and which was not violative of the Delaware Law, nor of the articles of incorporation, and in holding otherwise the Master was in error.

[fol. 589] (Note by the clerk of the District Court: The final decree of the District Court, dated December 1, 1936, which is made a part of original Exhibit SC-102, is omitted here because it is the same as Exhibit "C" which is a part of the Supplemental and Ancillary Bill of Complaint, and appears at folio pages 77 to 79 of this transcript.)

[fol. 590]

### Exhibit "C".

(Opinion of District Court on Overruling of Petitions for Rehearing and Motion for Vacation of Original Decree, etc.).

United States District Court, Northern District of Iowa,  
Eastern Division.

First Trust & Savings Bank, formerly named Bechtel Trust Company, and A. H. Schubert, Trustees, Plaintiffs,  
No. 220. vs. In Equity.

Iowa-Wisconsin Bridge Company, Defendant, Fayette D. Kendrick, et al., Interveners.

After several years struggle by the parties, the above cause came on for final decree on the first of December, 1936, and on that date the Court filed its opinion, its find-

ings of fact and conclusions of Law, and entered its final decree. On December 19th, 1936, Phoenix Finance Corporation filed a motion to vacate the decree and dismiss the cause upon the ground that the Court had lost jurisdiction of the cause when it permitted the Phoenix Finance Corporation to be made a party co-plaintiff with the trustees under the mortgage. The theory was that jurisdiction had rested on diversity of citizenship, and the making of Phoenix Finance Corporation a Delaware corporation, co-plaintiff, destroyed diversity of citizenship inasmuch as the Iowa-Wisconsin Bridge Company was also a Delaware corporation. For reasons stated in the supplemental opinion filed January 5th, 1937, the motion to vacate the decree and dismiss the cause was overruled. On January 29th, 1937, Phoenix Finance Corporation filed its petition for re-[fol. 591] hearing and modification of decree, and on the same date the trustees filed their motion to vacate and dismiss, similar to that previously filed by Phoenix Finance Corporation, and also in the alternative adopted the petition for rehearing of Phoenix Finance Corporation. The Interveners in behalf of the Bridge Company filed motions to strike and resistances to the petitions for rehearing. On the 18th day of February, 1937, these motions and petitions were fully argued orally before the Court and briefs submitted, and all matters then before the Court submitted.

The Court has determined to entertain the petitions for rehearing and modification of decree, rather than to strike the same, and dispose of the same on their merits. Respecting the motions to vacate and dismiss for want of jurisdiction, that matter has been fully answered by the supplemental opinion of the Court filed on the submission of a like motion by Phoenix Finance Corporation, on January 5th, 1937. The petition for rehearing filed by Phoenix Finance Corporation and adopted by the plaintiff trustees, rests upon the claim that the Master to whom the cause was referred in its entirety, received the submission under a misapprehension, and that the plaintiffs had also been of impression that they were to take further testimony at some future time when they submitted their bonds to the Master or to the Court. They further contend that the cause in behalf of the trustees and the Phoenix Finance Corporation was mismanaged by their counsel, and that



now having taken in new blood at the bar, the present counsel should be given a chance to try the case over.

Having in mind the analogy of petitions for rehearing in equity causes and motions for new trial in law causes, the Court is unable to find any substantial merit in any of the claims for a rehearing. The defense interposed to the plaintiffs' cause of action was that the bond issue and mortgage securing the same were all a part of a deliberate fraudulent scheme to obtain possession and ownership of the bridge after its completion and freeze out all of the stockholders. This scheme as alleged and as proven, dated back to the inception of a certain \$50,000. mortgage, and proceeded forward including the plans and their execution for the issuing of the bonds and mortgaging of the bridge. During all of this time the Phoenix Finance System Incorporated, and its successor Phoenix Finance Corporation, and the Bridge Company had interlocking directorates. The so-called Thompson interests predominated in all of them. As the Master pointed out in his fourth conclusion of law, in the circumstances with the charge of fraud and conspiracy made, the burden was on the plaintiffs who had brought the suit at the instance of the Phoenix corporations, to show clean hands and fair dealing. This the plaintiffs not only failed to do, but through out combated the interveners who were permitted to defend in behalf of the Bridge Company. The interveners obtained an Order of Court for the production of books and records of the Phoenix Finance Corporation before the Master, but Phoenix Finance Corporation vigorously and successfully it appears prevented the production of those books and records, and its officer when on the stand before the Master declared his inability to produce, for they had been sent to the State of Florida. It is now with poor grace that the plaintiffs invoke the discretion of the Court for a rehearing in order to use those very books and records. Anticipating an adverse ruling, the petitioners alternatively pray for a modification of the decree with provisions commanding the re-issuing of certain shares of stock to Phoenix Finance Corporation, which it canceled when fraudulently obtaining the bonds. One might conceive some invidious analogies to this situation. Having attempted the strong box of another, and being hoist by what is now claimed to be a premature explosion,



they volubly invoke the compassion of the Court to restore valuable implements of their craft left behind. I see no [fol. 592] reason why a court of equity should be deeply concerned in giving an affirmative relief to the Phoenix Finance Corporation. On the other hand I think the petitions for rehearing should be denied and the motion to dismiss and vacate the decree overruled, and it will be so ordered.

Dated March 4th, 1937.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, March 4th, 1937.

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Exhibit "D".

(Order Overruling Petitions for Rehearing and Motion for Vacation of Original Decree, etc., March 4, 1937).

United States District Court, Northern District of Iowa,  
Eastern Division.

First Trust & Savings Bank, formerly named Betchel Trust  
Company and A. H. Schubert, Trustees, Plaintiffs,  
No. 220. vs. In equity.  
Iowa-Wisconsin Bridge Company, Defendant, Fayette D.  
Kendrick, et al., Interveners.

On the 18th day of February, 1937, in pursuance of a previous assignment, there came before the Court the petitions for rehearing of the First Trust & Savings Bank, formerly named Bechtel Trust Company, and A. H. Schubert, Trustees, and Phoenix Finance Corporation, and also the motion of said trustees for a vacation of the Original decree herein and a dismissal of the cause for want of jurisdiction, and said motion and petitions having been fully argued by counsel for the respective parties in interest, were duly submitted and taken under advisement. And the Court now being fully advised in the premises, finds, the said motion and petitions to be without merit.

And it is now Ordered that the prayer of each of the petitions for rehearing be denied and that the motion to

vacate and dismiss be overruled, and an exception reserved to the moving and petitioning parties.

Done and Ordered this 4th day of March, 1937.

GEO. C. SCOTT,  
United States District Judge.

Filed in the District Court, March 4, 1937.

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Exhibit "E".

Copy of Assignment of Claimed Error.

Vol. II.

Transcript of Record.

[fol. 593] United States Circuit Court of Appeals, Eighth Circuit.

First Trust and Savings Bank and A. H. Schubert, as Trustees, and Phoenix Finance Corporation, Appellants,

No. 11,055. vs. In Equity.

Iowa-Wisconsin Bridge Company, a Corporation, Defendant, and Fayette D. Kendrick, Warren G. Hayes, Anna W. Schuster, T. H. Bakewell and Ernest W. Haverland, Interveners, Appellees.

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Appeal from the District Court of the United States for the Northern District of Iowa.

10.

(a) The court erred in approving and adopting the Master's Findings of Fact Nos. 5, 6, and 7 to the effect that the bonds for \$60,500 issued in exchange for stock were invalid as in contravention of the statutes of Delaware and of the Articles of Incorporation of the Bridge Company, for the reason that under the contracts and agreements of the parties the stock was held not as a stockholder, but as collateral for money advanced for the benefit of the Bridge Company.

(b) And in this connection, even if the interpretation placed upon the contract by the parties is incorrect and not binding upon the Bridge Company, nevertheless in finding that the bonds were improperly issued in exchange for the stock and were, therefore invalid, the court should also have found that the Bridge Company retained in its possession said stock so delivered in exchange for the bonds, and that same should be redelivered to the parties entitled thereto.

(c) And the court erred in finding that there was any fraud in connection with this transaction. The evidence does not justify any such finding.

(See page 510, Vol. II. Transcript of Record)

#### Appellants' Brief And Argument In Said Cause.

Specification of errors intended to be urged by Appellants.

13. The court further erred in failing and refusing to require the Bridge Company to restore the status quo of the parties and to redeliver the stock in exchange for the bonds, as particularly set forth in assignment of error No. 10 (Rec. p. 510).

(See page 14, of Appellant's Brief and Argument)

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[fol. 594] April 3, A. D. 1939—Motion for decree notwithstanding answer filed which said motion is as follows:

Comes Now, the Complainant, Phoenix Finance Corporation, by Marvel, Morford & Logan, its solicitors of record, and moves for a decree in accordance with the prayers of its complaint notwithstanding the answer filed herein by the respondent Iowa-Wisconsin Bridge Company.

ARTHUR G. LOGAN,  
MARVEL, MORFORD & LOGAN,  
Solicitors for Phoenix Finance  
Corporation.

To the Honorable Wm. Watson Harrington, Chancellor of  
the State of Delaware

Application is hereby made pursuant to Rule 44 for a  
hearing upon the foregoing motion within thirty days from  
the date of filing thereof.

ARTHUR G. LOGAN,  
MARVEL, MORFORD & LOGAN,  
Solicitors for Phoenix Finance  
Corporation.

I, Arthur G. Logan, solicitor for the Complainant, Phoenix Finance Corporation, do hereby certify that the foregoing motion for a decree notwithstanding the answer is in my judgment the proper method for the trial of the cause and that it is not made for purposes of delay.

ARTHUR G. LOGAN,  
Solicitor for Phoenix Finance  
Corporation.

State of Delaware,  
New Castle County,—ss.:

I, Anthony F. Emory, Register of the Court of Chancery of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing is a true and correct copy of the Bill of Complaint, Answer and exhibits and motion for decree notwithstanding answer, together with the docket entries appertaining, in the case entitled Phoenix Finance Corporation vs. Iowa-Wisconsin Bridge Company,

as the same remains on file and of record in said Court.

[fol. 595] In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Court, at Wilmington, this twenty-eighth day of February in the year of our Lord, nineteen hundred and forty.

(Seal)

ANTHONY F. EMORY,  
Register in Chancery.

State of Delaware, to-wit:

I, William Watson Harrington, Chancellor of the State of Delaware, do hereby certify that the foregoing Record and Attestation, made by Anthony F. Emory, Esquire,

Register in Chancery within the County of New Castle whose name is thereto subscribed, and to which the seal of said Court is affixed, are in due form of law, and made by the proper officer.

In Testimony Whereof, I have hereunto set my hand, this twenty-eighth day of February in the year of our Lord, nineteen hundred and forty.

WILLIAM WATSON HARRINGTON,  
Chancellor

State of Delaware,  
New Castle County,—ss.:

I, Anthony F. Emory, Register of the Court of Chancery of the State of Delaware, in and for New Castle County, do hereby certify that the Honorable William Watson Harrington, by whom the foregoing attestation was made and whose name is thereto subscribed, was at the time of the making thereof, and still is Chancellor of the State of Delaware, duly commissioned and sworn, to all whose acts, as such full faith and credit are and ought to be given, as well in Courts of Justice as elsewhere.

In Testimony Whereof, I have hereunto set my hand and affixed the seal of the Court, at Wilmington, this twenty-eighth day of February in the year of our Lord nineteen hundred and forty.

(Seal) ANTHONY F. EMORY,  
Register in Chancery.

Filed in the District Court, March 20, 1940.

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[fol. 596] (Exhibit S. C. 103)

State of Delaware,  
New Castle County—ss.:

I, Martin G. Hannigan, Prothonotary of the Superior Court of the State of Delaware, in and for New Castle County, do hereby certify that the foregoing pages contain a true copy of the whole Record and Proceedings in the case there stated as the same now remains in the Superior Court of the said State, at Wilmington.

